

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC
FILED-18DEC2018pm4:41

In the Matter of:

Blind Industries and Services of Maryland
3345 Washington Blvd.
Halethorpe, MD 21227

Respondent.

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DOCKET NO: FIFRA-03-2019-0035

CONSENT AGREEMENT

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Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, United States Environmental Protection Agency - Region III (“EPA” or “Complainant”) and by Blind Industries and Services of Maryland (“BISM” or “Respondent”) pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. §§ 22.13(b) and .18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under FIFRA for the violations alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.

6. Respondent shall bear its own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

Factual Allegations and Legal Background

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
9. At all times relevant to the violations alleged herein, BISM was a Maryland corporation with a principle place of business located at 3345 Washington Blvd. in Halethorpe, Maryland.
10. At all times relevant to the violations alleged herein, BISM was a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
11. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest."
12. Pursuant to 40 C.F.R. §§ 152.15(a)(1), the regulations implementing FIFRA give further guidance on what constitutes a pesticidal purpose, stating that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if, among other things, the person who distributes or sells the substance "claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a pesticide."
13. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and 40 C.F.R. § 152.15, the term "pest" includes viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms on or in living man or other living animals.
14. In October 2016, BISM was distributing or selling the following three (3) products:
 - a. *BISM Hospital Disinfectant 128*, EPA Reg. No. 106-72-59808 (one-gallon jugs);
 - b. *BISM Hospital Disinfectant 256*, EPA Reg. No. 106-73-59808 (one-gallon jugs); and
 - c. *Ultimate II*, EPA Reg. No. 106-81-59808 (one-quart bottles).
15. The labels for the three (3) products identified in Paragraph 14 each include claims, statements or implications that the products were intended for pesticidal purpose as described in 40 C.F.R. § 152.15(a)(1).
16. At all times relevant to the violations alleged herein, each of the three (3) products identified in Paragraph 14 was a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
17. Respondent is a "wholesaler, dealer, retailer or other distributor" as described in Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Alleged Violations

COUNTS 1-3 -VIOLATIONS OF SECTION 12(A)(1)(C) of FIFRA

18. The allegations contained in paragraphs 1 through 17 of this Consent Agreement are incorporated herein by reference.

19. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), makes it unlawful for any person in any State to distribute or sell to any person a registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

20. During an October 27, 2016 inspection of the BISM facility located at 3345 Washington Blvd. in Halethorpe, Maryland, the Maryland Department of Agriculture (“MDA”) collected physical samples of a one-gallon jug of *BISM Hospital Disinfectant 128*, EPA Reg. No. 106-72-59808, a one-gallon jug of *BISM Hospital Disinfectant 256*, EPA Reg. No. 106-73-59808, and a one-quart bottle of *Ultimate II*, EPA Reg. No. 106-81-59808, all of which were packaged, labeled and released for shipment.

21. Subsequent formulation testing of the physical samples collected by MDA revealed that each of the three products described in Paragraph 20 had concentrations of active ingredient that fell outside applicable allowable certified limits when compared with respective confidential statements of formula connected with product registrations under Section 3 of FIFRA, 7 U.S.C. § 136a, for each product.

22. By distributing or selling one-gallon jugs of *BISM Hospital Disinfectant 128*, EPA Reg. No. 106-72-59808 on October 27, 2016 with a composition that differed from the composition described in the confidential statement of formula for the registered product, BISM violated Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

23. By distributing or selling one-gallon jugs of *BISM Hospital Disinfectant 256*, EPA Reg. No. 106-73-59808 on October 27, 2016 with a composition that differed from the composition described in the confidential statement of formula for the registered product, BISM violated Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

24. By distributing or selling one-quart bottles of *Ultimate II*, EPA Reg. No. 106-81-59808 on October 27, 2016 with a composition that differed from the composition described in the confidential statement of formula for the registered product, BISM violated Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

Civil Penalty

25. In settlement of EPA’s claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of six thousand eight hundred and fifty-four dollars (\$6,854). The civil penalty amount is due and payable immediately upon Respondent’s receipt of a true and correct copy of this CAFO. If

Respondent pays the entire civil penalty of six thousand eight hundred and fifty-four dollars (\$6,854) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).

26. The Parties represent that the settlement terms are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act* and 40 C.F.R. Part 19.

27. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

28. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

29. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

30. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

31. Respondent shall pay the amount described in Paragraph 25 by sending a certified or cashier's check payable to the "United States Treasury," as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091
Molly Williams 513-487-2076

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

c. All payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

Beneficiary: US Environmental Protection Agency

e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Physical location of US Treasury Facility:

5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

- f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.
- g. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

All payments shall also reference the above case caption and docket number, DOCKET NO.: FIFRA-03-2019-0035. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Courtenay Hoernemann (3LC42), U.S. Environmental Protection Agency, Region III, Land and Chemicals Division, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

Certification

32. Respondent certifies that to the best of its knowledge it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 *et seq.*

Other Applicable Laws

33. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

34. This CAFO resolves only EPA’s civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of *the Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

35. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any

action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Parties Bound

36. This CAFO shall apply to and be binding upon Complainant, Respondent, and Respondent's officers, directors, successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date


37. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

38. This CAFO constitutes the entire agreement and understanding of the Complainant and Respondent concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between Complainant and Respondent other than those expressed herein.

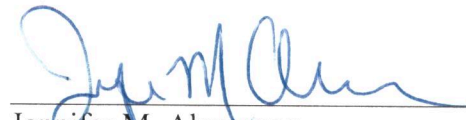
For Respondent:

11/19/18
Date


Frederick Puente, President
Blind Industries and Services of Maryland


For Complainant:

12/6/18
Date


Jennifer M. Abramson
Counsel for Complainant

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

12.13.18
Date


John A. Armstead, Director
Land and Chemicals Division
U.S. EPA, Region III

BEFORE THE UNITED STATES U.S. EPA-REGION 3-RHC
ENVIRONMENTAL PROTECTION AGENCY FILED-18DEC2018PM4:42
REGION III

IN THE MATTER OF:

Blind Industries and Services of Maryland
3345 Washington Blvd.
Halethorpe, MD 21227

Respondent.

EPA DOCKET NO. FIFRA-03-2019-0035

FINAL ORDER

**Proceeding under Section 14(a) of the
Federal Insecticide, Fungicide and
Rodenticide Act, 7 U.S.C. § 136l(a)**

FINAL ORDER

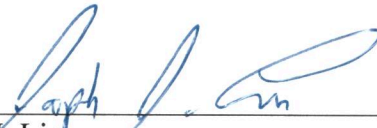
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Blind Industries and Services of Maryland, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act*, and the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

NOW, THEREFORE, PURSUANT TO Section 14(a) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **SIX THOUSAND EIGHT HUNDRED AND FIFTY-FOUR DOLLARS (\$6,854)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Dec. 18, 2018
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC
FILED-18DEC2018PM4:42

In the Matter of:)
) DOCKET NO.: FIFRA-03-2019-0035
)
Blind Industries and Services of Maryland)
3345 Washington Blvd.) Proceeding Under Section 14(a) of the
) Federal Insecticide, Fungicide and
Halethorpe, MD 21227) Rodenticide Act, 7 U.S.C. § 136l(a)
)
Respondent.)

CERTIFICATE OF SERVICE

I certify that on DEC 18 2018, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

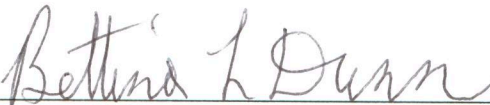
Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Thomas D. Kohn, Senior Director and Counsel
Blind Industries and Services of Maryland
3345 Washington Blvd.
Halethorpe, MD 21227

Copy served via **Hand Delivery or Inter-Office Mail and via E-mail** (at Abramson.Jennifer@epa.gov), to:

Jennifer M. Abramson
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: DEC 18 2018



Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 70042510 0004 79025741