

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne St
San Francisco, CA 94105

** FILED **

09NOV2018 - 01:09PM
U.S.EPA - Region 09

IN THE MATTER OF)
)
Kennerley-Spratling, Inc.) Docket No. FIFRA-09-2019- 0008
San Leandro, CA)
Respondent.) EXPEDITED SETTLEMENT
) AGREEMENT AND FINAL ORDER
)
_____)

EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER

1. The U.S. Environmental Protection Agency ("EPA"), Region IX, through the duly delegated Assistant Director of the Water and Pesticides Branch of the Enforcement Division ("Complainant"), alleges that **Kennerley-Spratling, Inc.** ("Respondent") failed to comply with Section 7(c)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c)(1), and its implementing regulations at 40 C.F.R. § 167.85.

2. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), 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. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe.

3. Pursuant to 40 C.F.R. § 167.85(d), a producer operating a registered pesticide producing establishment must submit an initial report to EPA no later than 30 days after the first registration of each establishment the producer operates and thereafter complete and submit an annual pesticide production report on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

4. Respondent has failed to comply with Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations at 40 C.F.R. § 167.85(d) by failing to complete and submit its annual pesticide production report for the 2017 reporting year for the facility located at 1446 Factor Avenue, San Leandro, CA 94577 (88193-CA-3) by **March 1, 2018**.

5. Respondent previously failed to submit an annual pesticide production report for the facility for production year 2014 by March 1, 2015, for which Respondent was issued a Notice of Warning on April 30, 2015.

6. Complainant and Respondent agree that settlement of this matter for a civil penalty of \$1,200 (One Thousand, Two Hundred Dollars) is in the public interest.

7. Complainant is authorized to enter into this Expedited Settlement Agreement (“Agreement”) for the assessment of a civil penalty that simultaneously commences and concludes this matter pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 1361(a) and 40 C.F.R. §§22.13(b) and 22.18(b).

8. In signing this Agreement, Respondent: (a) admits that Respondent is subject to FIFRA; (b) admits that EPA has jurisdiction over Respondent and Respondent’s conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to any conditions specified in the Agreement and to the assessment of the civil penalty; and (e) waives any right to contest the allegations contained herein or appeal the attached Final Order.

9. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that it has now submitted its 2017 annual pesticide production report; it is presently in compliance with all requirements of FIFRA, 7 U.S.C. 136 *et seq.*; and it has submitted proof of payment of the civil penalty assessed above with this Agreement.

10. No portion of the civil penalty or interest paid by Respondent pursuant to this Agreement shall be claimed by Respondent or any other person as a deduction from federal, state, or local income taxes.

11. In accordance with 40 C.F.R. § 22.18(c), this Agreement only resolves Respondent’s liability for federal civil penalties for the violation and facts specifically alleged in the Agreement. EPA reserves all of its rights to take enforcement action against Respondent for any other past, present, or future violations of FIFRA, any other federal statute or regulation, or this Agreement.

12. Each party shall bear its own costs and fees, if any.

13. The undersigned representatives of Respondent and Complainant each certifies that he or she is fully authorized to enter into this Agreement and to bind the party that he or she represents.

14. This Agreement is binding upon Respondent and its successors and assigns and, in accordance with 40 C.F.R. § 22.31(b), is effective upon the filing of the Agreement and the Final Order attached to the Agreement.

IT IS SO AGREED.

FOR RESPONDENT:

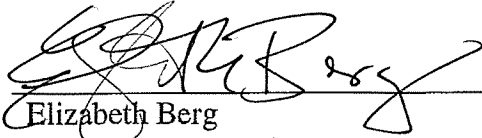


Date: 10/26/18

Name (Print): Kevin Ahern

Title (Print): General Manager

FOR COMPLAINANT:

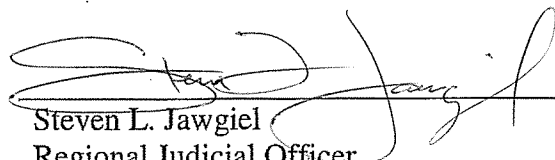


Elizabeth Berg
Acting Assistant Director
Water and Pesticides Branch, Enforcement Division
U.S. Environmental Protection Agency, Region 9

Date: 11/2/2018

Complainant and Respondent, having entered into the foregoing Expedited Settlement Agreement, this Agreement shall become effective upon filing.

IT IS SO ORDERED.



Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

Date: 11 / 09 / 18

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Expedited Settlement Agreement and Final Order, (**Docket No FIFRA-09-2019- 0008**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL:

Kevin Ahern, General Manager
Kennerley-Spratling, Inc.
2116 Farallon Drive
San Leandro, CA 94577

CERTIFIED MAIL NUMBER: 7015 0640 0001 1121 9547

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Carol Bussey, Esq
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Nov. 9, 2018
Date

Steven Armson
Regional Hearing Clerk
U.S. EPA, Region IX