



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

APR 27 2016

REPLY TO THE ATTENTION OF
LC-8J

VIA EMAIL

Mr. Mark Lerner
c/o Mr. Don Elliott
Senior of Counsel
Covington & Burling LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001

DElliott@cov.com

Consent Agreement and Final Order In the Matter of GOJO Industries, Inc.
Docket Number **FIFRA-05-2016-0009**

Mr. Elliott:

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 4/27/2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$282,000 is to be paid in the manner described in paragraphs 32-33. 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 cursive script, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

GOJO Industries, Inc.
Akron, Ohio

Respondent.



Docket No. FIFRA-05-2016-0009

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

Commencing and Concluding a 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 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, United States Environmental Protection Agency (EPA), Region 5.
3. The Respondent is GOJO Industries, Inc., a corporation doing business in the State of 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). 40 C.F.R. § 22.13(b).
5. The parties agree to settle this action without the filing of a complaint or the adjudication of any issue of fact or law to avoid litigation 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)(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.

11. 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.” Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

13. 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. Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

14. A “person” means any individual, partnership, association, corporation, or any organized group or persons whether incorporated or not. Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

15. A “registrant” is a person who has registered any pesticide pursuant to the provisions of FIFRA. Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

16. 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).

17. 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

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

19. Respondent owned or operated a place of business located at 1 GOJO Plaza, Suite 500, Akron, Ohio 44311 during the calendar year 2015.

20. On January 13, 2015, an inspector employed by the Ohio Department of Agriculture (ODA), and authorized to conduct inspections under FIFRA, conducted an inspection at Respondent’s place of business in Akron, Ohio.

21. During the January 13, 2015 inspection, the inspector requested shipping records related to the sale and distribution of Purell Sanitizing Wipes and due to the volume of records, the inspector agreed to allow Respondent to provide them electronically to EPA.

22. On or about February 19, 2015, Respondent provided electronic records of

receipt, records of distribution or sale and copies of labels for Purell Sanitizing Wipes, GOJO SKU numbers 9111-12 and 9113-06 to EPA.

23. The label of Purell Sanitizing Wipes, GOJO SKU number 9111-12, states:

- a. "Kills Illness Causing Germs*"
- b. "**Kills 99.99% of most common germs that may cause illness"
- c. "Kills 99% of Germs"
- d. "Purell Sanitizing Wipes"
- e. "Tough on Messes, Gentle on Hands"
- f. "Cleans up tough messes on surfaces and hands"

24. The label of Purell Sanitizing Wipes, GOJO SKU number 9113-06, states:

- a. "Kills Illness Causing Germs*"
- b. "**Kills 99.99% of most common germs that may cause illness"
- c. "Kills 99% of Germs"
- d. "Purell Sanitizing Wipes"
- e. "Tough on Messes, Gentle on Hands"
- f. "Cleans up tough messes on surfaces and hands"

25. Respondent claimed or implied by its name "Purell Sanitizing Wipes," GOJO SKU numbers 9111-12 and 9113-06, were intended to prevent, destroy, repel or mitigate germs on surfaces, not hands.

26. "Germs" are pests under Section 2(t) of FIFRA, 7 U.S.C. §136(t).

27. Purell Sanitizing Wipes, GOJO SKU numbers 9111-12 and 9113-06, is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. §136(u).

28. Respondent distributed or sold Purell Sanitizing Wipes on 170 occasions during January 2015.

29. Purell Sanitizing Wipes was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. §136a, during January 2015.

30. Respondent's distribution or sale of the unregistered pesticide Purell Sanitizing Wipes on 170 occasions constitutes 170 unlawful acts under Section 12(a)(1)(A) of FIFRA,

7 U.S.C. §136j(a)(1)(A).

Civil Penalty

31. 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 \$282,000. 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, the gravity of the alleged violation. Complainant also considered EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act*, dated December 2009.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$282,000 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "In the Matter of GOJO Industries, Inc." and the docket number of this CAFO.

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

Claudia Niess (LC-8J)
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

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

35. If Respondent does not pay timely 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.

36. 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

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO, including the violations associated with the records identified in paragraph 22 above.

38. 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.

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

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

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

42. 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.


43. 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 DElliot@cov.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

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

GOJO Industries, Inc., Respondent

April 11, 2016
Date


Mark Lerner
President and Chief Operating Officer
GOJO Industries, Inc.

United States Environmental Protection Agency, Complainant

4/21/2016
Date


Michael D. Harris ^{for M.G.}
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
GOJO Industries, Inc.
Docket No. FIFRA-05-2016-0009

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.

4/22/16
Date


Robert A. Kaplan
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: GOJO Industries, Inc.
Docket Number: **FIFRA-05-2016-0009**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2016-0009**, which was filed on 4/27/2016, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Respondent:

Don Elliott
DElliott@cov.com

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: April 27, 2016



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