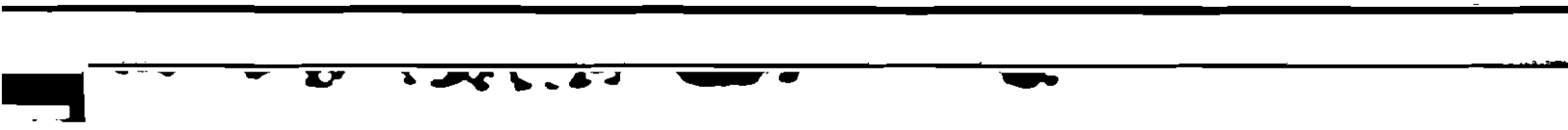


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**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF

Harry Weaver
800 Glenwood Drive
Ephrata, PA 17522

Respondent.

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)
) DOCKET NO: FIFRA-03-2008-0325

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) CONSENT AGREEMENT
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CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and by Harry Weaver ("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 arising from the violations of FIFRA alleged herein.
 2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement.
 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.
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EPA's Findings of Fact and Conclusions of Law

7. In accordance with the Consolidated Rules of Practice at Sections 22.13(b) and .18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:
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. Respondent owns and operates a business, located at 800 Glenwood Drive in Ephrata, Pennsylvania, that sells retail products and services to the dairy industry. Respondent sometimes conducts business under the name Weaver's IBA.
10. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
11. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 define "pesticide", in pertinent part, to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant or desiccant, with exceptions not relevant to this case.
12. 40 C.F.R. § 152.3 defines "pesticide product", in pertinent part, to mean a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold.
13. Pursuant to 40 C.F.R. § 152.15, "[a] substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if: (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) That the substance . . . can or should be used as a pesticide, . . . (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), . . . or (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose."
14. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines "pest" to mean 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 (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
15. In May and June 2007, Respondent sold a product in five (5) gallon containers with labels that identified it as "CLOROX Regular Bleach" and that stated that it "Cleans & Disinfects" ("Weaver's CLOROX").

16. By stating that it “[d]isinfects”, Weaver’s CLOROX label made a pesticidal claim.
17. Weaver’s CLOROX is a “pesticide” and a “pesticide product” as those terms are defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
18. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3, define “produce”, in pertinent part, to mean to manufacture, prepare, propagate, compound, or process any pesticide, or to package, repackage, label, relabel or otherwise change the container of any pesticide.
19. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3, define “producer, in pertinent part, to mean any person who produces any pesticide (including packaging, repackaging, labeling and relabeling).
20. 40 C.F.R. §167.3 defines “establishment”, in pertinent part, to mean any site where a pesticidal product is produced.
21. Respondent made Weaver’s CLOROX at his facility located at 800 Glenwood Drive in Ephrata, Pennsylvania by repackaging fifty-five (55) gallon containers of the EPA registered 8.4% Sodium Hypochlorite distributor product IBA FS-100 LIQUID SANITIZER, EPA Reg. No: 8405-2-11403 into five (5) gallon containers, and labeling the five (5) gallon containers as CLOROX Regular Bleach.
22. By repackaging the EPA registered 8.4% Sodium Hypochlorite distributor product IBA FS-100 LIQUID SANITIZER into smaller containers and labeling the containers as CLOROX Regular Bleach, Respondent “produced”, and is a “producer” of a pesticide, as those terms are defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3.
23. With respect to the production of Weaver’s CLOROX, Respondent’s facility located at 800 Glenwood Drive in Ephrata, Pennsylvania was an “establishment” as that term is defined by 40 C.F.R 167.3.
24. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L), it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C § 136e.
25. Pursuant to Section 7(a) of FIFRA, 7 U.S.C § 136e(a), “[n]o person shall produce any pesticide. . . in any State unless the establishment in which it is produced is registered with [EPA].”
26. At all times relevant to the violations alleged herein, Respondent’s establishment located at 800 Glenwood Drive, in Ephrata, Pennsylvania was not registered with EPA as a pesticide producing establishment.

27. By producing a pesticide at an establishment not registered pursuant to Section 7(a) of FIFRA, 7 U.S.C § 136e(a), Respondent violated that section, constituting an unlawful act under Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L).

28. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C § 136j(a)(1)(E), it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is adulterated or misbranded.

29. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), provides, in pertinent part, that 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.

30. During May and June 2007, Respondent sold five (5) gallon containers of Weaver's CLOROX to various individuals, partnerships, associations, corporations and/or organized groups of persons on at least six (6) different occasions.

31. Each occasion on which Respondent distributed or sold containers of Weaver's CLOROX constitutes a "distribution or sale" of a "pesticide" and "pesticide product" to a "person" as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3.

32. Pursuant to Section 2(q)(1) of FIFRA, 7 U.S.C § 136(q)(1), a pesticide is "misbranded" if *inter alia* its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular, or if it is an imitation of, or is offered for sale under the name of, another pesticide.

33. Weaver's CLOROX labels included the following statements:

- a. CLOROX Regular Bleach
- b. Active Ingredient:
Sodium Hypochlorite6%

34. As the statements described in paragraphs 33.a. and b., above, are false or misleading as to the name of the product and the concentration of its active ingredient, and represent that the product is CLOROX Regular Bleach instead of IBA FS-100 LIQUID SANITIZER, Weaver's CLOROX is misbranded as defined by Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1).

35. Each occasion on which Respondent distributed or sold containers of misbranded Weaver's CLOROX in May and June 2007 constitutes a separate unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

36. Respondent is a "distributor" subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

Civil Penalty

37. In settlement of the action referenced in the caption above, Respondent consents to the assessment of a civil penalty of thirty six thousand four hundred dollars (\$36,400) and agrees to pay such penalty in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this executed CAFO is mailed or hand-delivered to the Respondent.

38. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors 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 violations. These factors were applied to the particular facts and circumstances of this case with specific reference to the *FIFRA Enforcement Response Policy* ("ERP"), dated July 2, 1990, and the *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)*, dated September 21, 2004.

39. Payment of the civil penalty amount required under the terms of paragraph 37., above, shall be made 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO, 63197-9000.

Contact: Natalie Pearson
314-418-4087

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
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

c. 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

(Field tag 4200 of Fedwire message should read "D
68010727 Environmental Protection Agency")

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

PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

Contact: Jesse White
301-887-6548

e. 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.

All payments shall also reference the above case caption and docket number, DOCKET NO.: FIFRA-03-2008-0325. 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 Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Stephen Forostiak (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

40. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this executed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the 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).

The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.

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

41. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

Certifications

42. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 et seq.

Other Applicable Laws

43. 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

44. 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 there under, 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

45. 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. § 1361(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

46. This CAFO shall apply to and be binding upon EPA, Respondent, and the officers, directors, successors, and assigns of Respondent. 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

47. 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

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

For Respondent:

8-9-08
Date

Harry Weaver
Harry Weaver

For Complainant:

8-15-08
Date

Stephen Forostiak
Stephen Forostiak
U.S. EPA, Region III

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

8/28/08
Date

Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF

Harry Weaver
800 Glenwood Drive
Ephrata, PA 17522

Respondent.

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DOCKET NO: FIFRA-03-2008-0325

FINAL ORDER

FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Harry Weaver, 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, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). 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.

NOW, THEREFORE, PURSUANT TO Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, *as amended*, 7 U.S.C. § 136l(a) ("FIFRA"), and the Consolidated Rules of Practice, and having determined, based on the parties' representation in the Consent Agreement, that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), IT IS

HEREBY ORDERED that Respondent pay a penalty of thirty six thousand four hundred dollars (\$36,400), and comply with the terms and conditions of the Consent Agreement.

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

9/3/08
Date



Renee Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF)

Harry Weaver)
800 Glenwood Drive)
Ephrata, PA 17522)

Respondent.)

DOCKET NO: FIFRA-03-2008-0325

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and one copy by hand-delivery:

Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail

Mr. Curtis N. Stambaugh
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166

Counsel to Harry Weaver

SEP 04 2008

Date



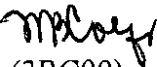
Jennifer M. Abramson (3RC10)
Assistant Regional Counsel
U.S. EPA, Region III




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
Docket No.: FIFRA-03-2008-0325

FROM: William C. Early 
Regional Counsel (3RC00)

Abraham Ferdas, Director 
Land and Chemicals Division (3LC00)

TO: Renée Sarajian
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order ("CAFO") have been negotiated with Harry Weaver ("Respondent") in settlement of actionable Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") violations. The compliance issues addressed in the CAFO involve producing pesticides at an unregistered establishment, and distributions or sales of misbranded pesticides, which constitute unlawful acts under Sections 12(a)(2)(L) and 12(a)(1)(E) of FIFRA; 7 U.S.C. §§ 136j(a)(2)(L) and 136j(a)(1)(E).

The litigation team calculated a civil penalty of thirty six thousand four hundred dollars (\$36,400) in accordance with the statutory factors 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 violations. These factors were applied to the particular facts and circumstances of this case with specific reference to the *FIFRA Enforcement Response Policy* ("ERP"), dated July 2, 1990, and the *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)*, dated September 21, 2004.

We recommend that you sign the attached Final Order assessing thirty six thousand four hundred dollars (\$36,400) in civil penalties against Respondent. After you execute the Final Order, please return the documents to Jennifer M. Abramson of the Land and Chemicals Division for further processing.

Attachments

cc: Curtis N. Stambaugh
