

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Kan Tham 9/19/14
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number FIFRA-01-2014-0059

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Ultravation, Inc
212 Ideal Way
Poultney, VT 05764

Total Dollar Amount of Receivable \$ 800 Due Date: 10/19/14

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

- INSTALLMENTS OF:
- 1st \$ _____ on _____
 - 2nd \$ _____ on _____
 - 3rd \$ _____ on _____
 - 4th \$ _____ on _____
 - 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1 – New England
5 Post Office Square - Suite 100
Boston, Massachusetts 02109-3912

RECEIVED

SEP 19 2014

EPA ORC
Office of Regional Hearing Clerk *WJ*

BY HAND

September 17, 2013

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: *In the Matter of Ultravation, Inc.*
Docket No. FIFRA-01-2014-0059

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order settling the matter referenced above pursuant to 40 C.F.R. § 22.18(b) and a certificate of service.

Please contact me at (617) 918-1872 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Tham".

Kan Tham, FIFRA Enforcement Coordinator
U.S. Environmental Protection Agency
Region 1 (Mail Code OES05-4)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Enclosures

cc: Al Jackson, Vice President, Ultravation, Inc.
Karen McGuire, Manager, Enforcement Counsel, U. S. EPA Region 1
Sharon Hayes, Manager, Toxics and Pesticides Unit, U. S. EPA, Region 1
Jim Lelanc, Director, Vermont Agency of Agriculture, Food and Markets

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)

RECEIVED

SEP 19 2014

EPA ORC
Office of Regional Hearing Clerk

In The Matter Of:)
)
Ultravation, Inc.)
212 Ideal Way)
Poultney, VT)
)
)
Respondent.)
_____)

Docket No. FIFRA-01-2014-0059

**CONSENT AGREEMENT
and
FINAL ORDER**

INTRODUCTION

1. The United States Environmental Protection Agency-Region 1 (“EPA”), as Complainant, and Ultravation, Inc. (“Ultravation” or “Respondent”), as Respondent, enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. The CAFO informs Respondent of EPA’s intention to assess a penalty against Ultravation for alleged violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Part 167, Subpart E. The CAFO also informs Respondent of its right to request a hearing.

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

PRELIMINARY STATEMENT

4. Respondent is a corporation organized under the laws of the State of Vermont; has a place of business at 218 Jones Drive, Brandon, VT at which it operates a pesticide-producing facility (the "Facility"); and is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

5. Pursuant to Sections 7(a) and (b) of FIFRA, 7 U.S.C. §§ 136e(a) and (b), and 40 C.F.R. § 167.20, on or about March 28, 2002, Respondent registered the Facility as a pesticide-producing establishment. EPA's national office in Washington, DC ("EPA Headquarters") assigned the Office of Pesticide Programs (OPP) company number 74725. EPA Region 1 assigned the EPA Establishment Number 74725-VT-001 to the Facility.

6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the implementing regulations codified at 40 C.F.R. Part 167, Subpart E, require any producer operating a registered establishment to report to EPA the types and amounts of each pesticide product that it is currently producing, that it produced during the past year, and that it sold or distributed during the past year.

7. Under 40 C.F.R. § 167.85(d), a producer is responsible for obtaining, completing and reporting this information each year, even if it has not produced any pesticidal product for the reporting year. The information must be submitted to EPA, on

a form available from EPA Headquarters, on or before March 1 of the year subsequent to the calendar year which is the subject of the report.

8. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes a civil penalty of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, this amount was increased to \$6,500 for violations occurring after March 15, 2004, and to \$7,500 for violations occurring after January 12, 2009.

9. On or about June 7, 2013, EPA issued an Opportunity to Show Cause to Ultravation for failure to file its production report for calendar years 2007, 2008, 2009, 2011 and 2012 on or before the March 1 due date for each year.

10. On or about June 14, 2014, Mr. Kan Tham, FIFRA Enforcement Coordinator at EPA Region 1, contacted Ultravation by phone to inquire about the Facility's failure to file its annual pesticide production report for calendar year 2013 by March 1, 2014.

11. On or about June 27, 2014, Ultravation submitted an annual production report for calendar year 2013.

12. On or about July 10, 2014, EPA issued another Opportunity to Show Cause to Ultravation regarding the Facility's failure to file timely a production report for calendar year 2013.

13. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For the purposes of this proceeding, Respondent waives any

defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violation herein, Respondent consents to the terms of this CAFO.

14. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

15. By signing this CAFO, Respondent certifies that it is presently operating in compliance with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and has fully addressed the violations alleged by EPA herein.

EPA FINDINGS

16. EPA finds, based on its investigation of facts and circumstances underlying Ultravation's participation as an owner or operator of a pesticide-producing establishment, that Respondent violated Section 7(c) of FIFRA, as further described.

17. During all relevant times, the Facility was registered with EPA as a pesticide-producing establishment under Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), and 40 C.F.R. Part 167.

18. Notwithstanding the March 1, 2014 due date and the issuance of the Show Cause letter in 2013, as described above, Respondent did not timely submit its pesticide production report for calendar year 2013.

19. Respondent's failure to submit the required information to EPA for calendar year 2013 on or before March 1, 2014 constitutes a violation of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to

Section 12(a)(2)(L) of FIFRA and a violation for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

TERMS OF SETTLEMENT

20. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, EPA's penalty policy guidance including the May 2010 "Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements," the Monetary Penalty Inflation Adjustment Rule promulgated in accordance with the DCIA and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of \$800 in settlement of the violations alleged herein.

21. Respondent shall pay the penalty of \$800 within thirty (30) days of the effective date of this CAFO. Payment shall be in a single payment of \$800. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date process by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard time to be considered received that day.

22. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall designate the name and docket number of this case ("*In the Matter of Ultravation, Inc.*, FIFRA, 01-2014-0059"), be in the amount of \$800, and be payable to "Treasurer, United States of America."

23. The payment shall be remitted as follows:

If remitted by regular U.S. mail, to:

U.S. Environmental Protection Agency / Fines and Penalties
Cincinnati Finance Center

P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier, to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)
800-234-5681

If remitted on-line with a debit card, credit card, or bank account transfer: No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering 1.1 in the form search box on the left side of the screen to access the EPA's Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting "submit data," entering the relevant debit card, credit card, or bank account information.

24. At the time of payment, Respondent shall provide copies of the check (or notification of other form of payment) to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and:

Kan S. Tham, FIFRA Enforcement Coordinator
U.S. Environmental Protection Agency

Region 1 (Mail Code OES 05-4)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

25. If Respondent fails to pay the civil penalty, it will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty.

Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

26. The civil penalty due and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

27. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA, for the specific violations alleged in this CAFO. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

28. Each Party shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

29. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent:

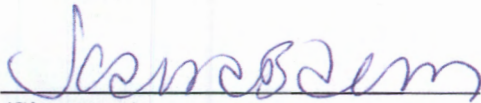
Al Jackson
(Signature)

VP
(Title)

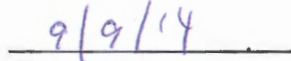
9/5/14
(Date)

Al Jackson
(Print Name)
Ultravation, Inc.
212 Ideal Way
Poultney, VT 05764

For EPA Region 1:



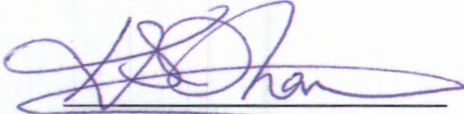
(Signature)



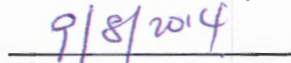
(Date)

Joanna B. Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
EPA-Region 1

and:



(Signature)



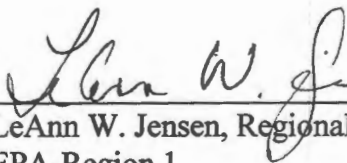
(Date)

Kan Tham, FIFRA Enforcement Coordinator
Toxics and Pesticides Unit
Office of Environmental Stewardship
EPA-Region 1

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, Ultravation, Inc., is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

9/11/14
(Date)



LeAnn W. Jensen, Regional Judicial Officer
EPA-Region 1

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER (Docket No. FIFRA-01-2013-0059) was sent to the following persons, in the manner specified on the date below:

Original and one copy
hand delivered:

Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Sq., Suite 1100
Mail Code: ORA18-1
Boston, MA 02109-3912

Copy, via Certified Mail,

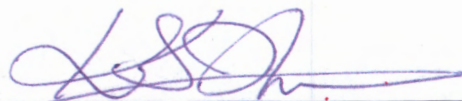
Al Jackson, Vice President
Ultravation, Inc.
212 Ideal Way
Poultney, Vermont 05764

Copy, via First Class Mail,

Jim Leland, Director
Vermont Agency of Agriculture, Food and Markets
116 State Street, Drawer 20
Montpelier, Vermont 05620-2901

Date:

9/17/2014



Kan S. Tham, FIFRA Enforcement Coordinator
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Sq., Suite 100
Mail Code: OES05-4
Boston, MA 02109-3912
tel: (617) 918-1872
email: tham.kan@epa.gov