



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY/REGION 2  
2010 APR 20 AM 8:15  
REGIONAL HEARING  
CLERK

APR 28 2010

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
AND BY REGULAR MAIL**

Daniel Fogel  
President  
HygienicAire, Inc.  
13 South Cayuga Road  
Williamsville, New York 14221

Re: In the Matter of HygienicAire, Inc.,  
Docket Number FIFRA-02-2009-5211

Dear Mr. Fogel:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Judicial Officer (RJO) of the U.S. Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the RJO. Please arrange for payment of this penalty according to the instructions given in that Order.

Sincerely yours,

  
Jeannie M. Yu  
Assistant Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
REGIONAL HEARING  
CLERK  
2010 JAN 20 AM 8:17

-----X  
In the Matter of :  
 :  
**HYGIENICAIRE, INC.,** :  
 :  
Respondent. :  
 :  
Proceeding Under the Federal Insecticide, :  
Fungicide and Rodenticide Act, as amended. :  
-----X

CONSENT AGREEMENT  
AND FINAL ORDER

Docket No. FIFRA-02-2009-5211

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to 7 U.S.C. § 136 1(a), of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq. ("FIFRA" or "the Act"). On January 9, 2009, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, ("EPA"), Region 2, issued a Complaint and Notice of Opportunity for Hearing, Docket No. FIFRA-02-2009-5211, to Respondent, HygienicAire, Inc. located at 786 Terrace Boulevard, Suite 11, Depew, New York 14043. The Complaint alleged the distribution and/or sale of ten different unregistered pesticides. The Complaint seeks a total civil penalty of \$65,000. Respondent did not file an Answer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is HygienicAire, Inc., (hereinafter alternatively referred to as "HygienicAire", or "Respondent").
2. Respondent is engaged in the business of manufacturing teatree oil products.
3. Respondent is a "person" as that term is defined by FIFRA Section 2(s), 7 U.S.C. § 136(s) and as such, is subject to FIFRA and the regulations promulgated thereunder.

4. Respondent owns and operates a facility located at 786 Terrace Boulevard, Suite 11, Depew, New York 14043 .
5. Respondent's facility constitutes an "establishment", as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd). Respondent is a "distributor or seller" within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
6. Respondent is a "wholesaler", "dealer", or "other distributor" within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. §136l(a) (1).
7. On January 3, 2008, employees of the State of New York duly designated by the Administrator of EPA inspected Respondent's facility pursuant to provisions of Section 9(a)(1) of FIFRA, 7 U.S.C. § 136g(a)(1).
8. On January 15, 2008 and February 11, 2008, the inspectors conducted an inspection of Respondent's headquarters located at 13 South Cayuga Road, Williamsville, New York 14221.
9. As a direct result of the inspections described in paragraphs 7 and 8, above, EPA obtained evidence of the distributions and/or sales of the following pesticidal products:
  - a. HygienicAire;
  - b. HygiMist;
  - c. MPT Mold Prevent Technology;
  - d. HygiClean;
  - e. HygiMist Luggage Treatment;
  - f. CreteClean;
  - g. XtenClean;
  - h. VinylClean;
  - i. PoolClean; and
  - j. GroutClean.
10. Each of the labels on the Respondent's products listed in paragraph 9, above, does not bear an EPA product registration number or an EPA pesticide producing establishment registration number.
11. The claims on the labels of each of the products listed in paragraph 9, above, indicate that such product is intended for the purpose of preventing, destroying, repelling or mitigating pests and is therefore a pesticide. Each of the pesticides is not registered with the EPA.
12. Respondent's distributions and sales of the pesticides listed in paragraph 9, are violations of FIFRA Section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A).

13. A Complaint was issued on January 9, 2009 for the total amount of \$65,000, charging Respondent with a distribution /sale of each of the pesticides set forth in Paragraph 9.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed as follows:

Respondent shall, immediately upon the effective date of this Consent Agreement and Final Order, comply with the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq.*, and its implementing regulations, with respect to all pesticides it produces and distributes. Respondent represents that it is now in compliance with all requirements of FIFRA and its implementing regulations.

1. HygienicAire shall pay a civil penalty to EPA in the total amount of **FIVE THOUSAND DOLLARS (\$5,000)** as set forth below. Each payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payments are made by check, then each check shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

Each check shall be identified with a notation thereon listing the following: ***IN THE MATTER OF HYGIENICAIRE, INC.***, and shall bear thereon the Docket Number FIFRA-02-2009-5211. Payment of the penalty must be *received* at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the "due date").

If HygienicAire chooses to make the payment by EFT, then HygienicAire shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: HygienicAire, Inc.

7) Case Number: FIFRA-02-2009-5211.

Such EFT must be received on or before 45 calendar days after the date of signature of the Final Order at the end of this document.

Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Jeannie M. Yu, Esq.  
Assistant Regional Counsel  
Environmental Protection Agency, Region 2  
290 Broadway, Room 1635  
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk  
Environmental Protection Agency, Region 2  
290 Broadway, Room 1631  
New York, New York 10007-1866

- a. The penalty amount of \$5,000 is to be paid in four installments set forth as follows:
- i. The first installment amount of **One Thousand Two Hundred and Fifty Dollars (\$1,250)** must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document.
  - ii. The second installment amount of **One Thousand Two Hundred and Fifty Dollars (\$1,250)** must be received at the above address on or before ninety (90) calendar days after the due date for the first installment.
  - iii. The third installment amount of **One Thousand Two Hundred and Fifty Dollars (\$1,250)** must be received at the above address on or before one hundred and eighty (180) calendar days after the due date for the first installment.
  - iv. The fourth installment amount of **One Thousand Two Hundred and Fifty Dollars (\$1,250)** must be received at the above address on or before two hundred and seventy (270) calendar days after the due date for the first installment.

- b. Failure to pay the requisite amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
  - c. Furthermore, if any payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
  - d. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date for which the payment was required hereto to have been made.
  - e. The effective date of this Consent Agreement and Final Order shall be the date it is filed with the Regional Hearing Clerk.
2. Respondent admits the jurisdictional allegations of the Complaint, and neither admits nor denies the Findings of Fact and Conclusions of Law in this Consent Agreement.
  3. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's representations in this proceeding) the civil and administrative claims alleged in the Complaint. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
  4. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms.
  5. Respondent consents to the issuance of the accompanying Final Order.
  6. Respondent agrees that all terms of settlement are set forth herein.
  7. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations contained within those documents.
  8. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy

Regional Administrator or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

9. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
10. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.
11. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
12. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.
13. Each signatory of this Consent Agreement certifies that he or she is duly and fully authorized to enter into the terms of this Consent Agreement and to legally bind the party on behalf of which he or she signs this Consent Agreement.

RESPONDENT

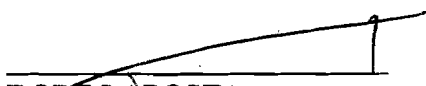
BY: *Daniel E. Fogel*  
HYGIENCAIRE, INC.

NAME *Daniel E. Fogel*  
(Please Print)

TITLE: *President*

DATE: *4/14/10*

COMPLAINANT:

  
DORE LAPOSTA  
Director  
Division of Enforcement and Compliance  
Assistance  
U.S. Environmental Protection Agency  
- Region 2

DATE: *APRIL 20 2010*



In the Matter of HygienicAire, Inc., Docket No. FIFRA-02-2009-5211

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.



HELEN FERRARA

Regional Judicial Officer

U.S. Environmental Protection Agency - Region 2

290 Broadway, 16<sup>th</sup> Floor

New York, New York 10007

In the Matter of HygienicAire, Inc., Docket No. FIFRA-02-2009-5211

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy by Hand:

The Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency  
- Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Daniel Fogel  
President  
HygienicAire, Inc.  
13 South Cayuga Road  
Williamsville, New York 14221

Dated: APR 28, 2009  
New York, New York

*Mildred N. Baerz*