



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
January 30, 2015

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL

Receipt No.7011 1150 0000 2643 8197

Mr. Thomas O'Donnell
The Café Building
1405 East Sixth Street
Cleveland, Ohio 44114-1607

Consent Agreement and Final Order In the Matter of
Guardian Technologies LLC. Docket No. FIFRA-05-2015-0026

Dear Mr. O'Donnell:

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 January 30, 2015, with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,900 is to be paid in the manner described in paragraph 27. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by February 29, 2015 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

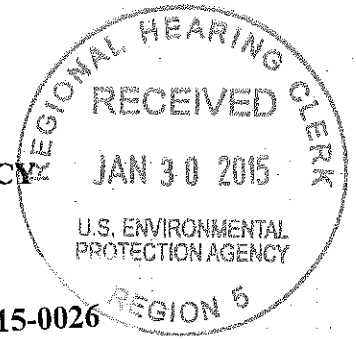
Sincerely,

Terence Bonace

602 Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)
Guardian Technologies LLC)
Mentor, Ohio,)
Respondent.)
_____)

Docket No. FIFRA-05-2015-0026
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

Preliminary Statement

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 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, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Guardian Technologies LLC, a limited liability company 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 that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law 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)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it is unlawful for any person to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration under Section 3 of FIFRA.

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

12. 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. 7 U.S.C. § 136(t).

13. 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)(l) of FIFRA, 7 U.S.C. § 136/(a)(l), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

14. Respondent is a limited liability company and is therefore a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

15. At all times relevant to the Complaint, Respondent owned or operated a place of business located at 7700 Saint Clair Avenue, Mentor, Ohio.

16. On August 6, 2014, an inspector employed and authorized by the EPA to conduct inspections under FIFRA, visited Respondent's web site at www.guardiantechnologies.com and observed the offer for sale of *Aquastick*.

17. Respondent's web site allows visitors to shop for products, provides information about products, provides prices for products, includes a virtual shopping cart, and allows visitors to make online purchases.

18. On September 28, 2012, EPA issued a conditional notice of pesticide registration to Respondent for the pesticide product *Aquastick* and assigned it EPA Registration Number (EPA Reg. No.) 82260-1.

19. Silver is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests, and is therefore a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

20. Respondent registered its pesticide *Aquastick* pursuant to the provisions of FIFRA, and is therefore a "registrant" as defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

21. During calendar years 2014, *Aquastick* was a registered pesticide with an EPA accepted label dated September 28, 2012.

22. On or about August 6, 2014, Respondent's web site at www.guardiantechnologies.com offered for sale *Aquastick* with the statement, "The Aquastick is a safe, chemical free and non-toxic treatment..."

23. The September 28, 2012 accepted label for *Aquastick* did not include the statement, "The Aquastick is a safe, chemical free and non-toxic treatment..."

24. On or about August 6, 2014, Respondent distributed or sold *Aquastick* on its web site at www.guardiantechnologies.com.

25. The August 6, 2014 distribution or sale of *Aquastick* with claims that substantially differed from claims made as part of the statement required in connection with the product registration under Section 3 of FIFRA, 7 U.S.C. § 136a in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. §136(j)(a)(1)(B).

Civil Penalty

26. 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 \$1,900. 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, and the gravity of the violation

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,900 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

28. Respondent must send a notice of payment that states Respondent's name, complete address, the case docket number and the billing document number to EPA at 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

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Cathleen Martwick (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

30. If Respondent does not pay timely the civil penalty, 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. § 136(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

31. 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

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

33. 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.

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

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

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

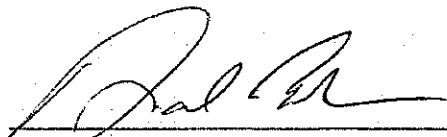
37. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Guardian Technologies LLC, Respondent

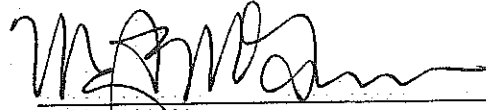
12/23/14
Date



David Brickner
Managing Partner

United States Environmental Protection Agency, Complainant

1/21/2015
Date



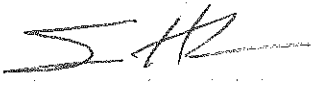
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Guardian Technologies LLC
Docket No. FIFRA-05-2015-0026

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.

1/26/2015
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

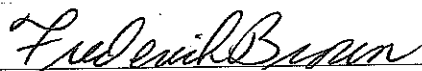
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Guardian Technologies, Inc., was filed on January 30, 2015, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7011 1150 0000 2643 8197, a copy of the original to the Respondent:

Mr. Thomas O'Donnell
The Café Building
1405 East Sixth Street
Cleveland, Ohio 44114-1607

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
C. Martwick, Assistant Regional Counsel, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2015-0026