



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 26 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Steven Warm
Attorney at Law
9124 S.W. 51st Road
Suite B-102
Gainesville, Florida 32608

Re: Custom Biologicals, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2012-3008(b)

Dear Mr. Warm:

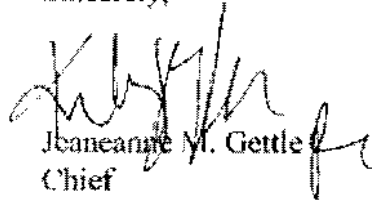
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the initial payment of \$3,019.04 of the assessed penalty of \$12,000 is due within 30 days from the effective date. Please ensure that the face of your client's cashier's or certified check includes the name of the company and the Docket Number for this case. Penalty payment questions should be directed to Ms. Heather Russell either by telephone at (513) 487-2044 or by written correspondence to her attention at the U.S. Environmental Protection Agency's Cincinnati Accounting Operations address identified in the CAFO.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the EPA. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Ms. Dawn Johnson of the EPA Region 4 staff at (404) 562-9017.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne M. Gettle". The signature is fluid and cursive, with a large initial "J" and "M".

Jeanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Customs Biologicals, Inc.)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2012-3008(b)

RECEIVED
EPA REGION IV
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HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is Custom Biologicals, Inc.
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as

the Complainant in this matter, and has the authority to sign Consent Agreements memorializing settlements between EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to 40 C.F.R. § 22.5(e)(4) the following individual is authorized to receive service for EPA in this proceeding:

Dawn Johnson
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9017.

5. Respondent is Custom Biologicals, Inc., a Florida corporation, located at 1239 East Newport Center Drive, Deerfield Beach, Florida 33442.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

III. Specific Allegations

7. On or about November 9, 2009, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 1239 East Newport Center Drive, Deerfield Beach, Florida 33442.

8. During the aforementioned inspection, the "Nullifly Drain and Odor Bio-Control" product was identified as being sold and/or distributed by the Respondent. The product label made the following pesticidal claims:
 - "disrupts the habitat that drain flies require for reproduction,"
 - "degrades organic material other insects need as a food source"
 - "when flies are gone, use once per week as maintenance dosage"
9. Because pesticidal claims were being made for "Nullifly Drain and Odor Bio-Control," the product is a "pesticide" as the term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. §136(t), as 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 microorganisms 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).
11. Respondent "distributes or sells" pesticides. The term "to distribute to sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
12. Pesticides that are sold and distributed in the United States are required to be registered with the EPA pursuant to Section 3 FIFRA, 7 U.S.C. § 136a.
13. At the time of the inspection, the "Nullifly Drain and Odor Bio-Control" product was not registered as a pesticide with EPA.

14. The inspector documented at least five (5) offers for sale and/or distribution of said pesticide.
15. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.
16. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least five (5) occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
17. At the time of the inspection, the "Nullifly Drain and Odor Bio-Control" product was misbranded as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q) in that the product label did not contain a first aid statement and storage and disposal statement to adequately protect human health and the environment. In addition, the product name, design or graphic representation of a fly within a red circle with a red line going through the fly, before and after picture of a floor and fly before the application of the product, and the floor after the application of the product, links this product to pest control, which is false and misleading.
18. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide which is misbranded.
19. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least 5 (five) occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
20. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful to produce a pesticide in any State unless the establishment is registered with the Administrator of

EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e. At the time of the inspection, Respondent produced the "Nullifly Drain and Odor Bio-Control" product in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment.

21. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) and is subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
22. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
23. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
24. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **TWELVE THOUSAND DOLLARS (\$12,000)** against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

25. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
26. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
27. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.

28. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
29. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
30. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

31. Respondent is assessed a civil penalty of **TWELVE THOUSAND DOLLARS (\$12,000)**. Four payments will be made to complete payment of the entire civil penalty including interest. The first installment is due within 30 days from the effective date of this CAFO. The subsequent three payments shall be due in 90-day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **TWELVE THOUSAND SEVENTY SIX DOLLARS AND EIGHTEEN CENTS (\$12,076.18)**. Respondent shall make quarterly payments as follows:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Amount</u>
1	within 30 days of filing of CAFO	\$3,019.04
2	within 120 days of filing of CAFO	\$3,019.04
3	within 210 days of filing of CAFO	\$3,019.04
4	within 300 days of filing of CAFO	\$3,019.04

32. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. Mail to the following address:

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

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

33. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

Dawn Johnson
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

34. If Respondent fails to make payment as set forth above, and if such payment is not made within 30 days after the due date, that payment and accrued interest shall become immediately due and payable on the 31st day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.

35. Further, if Respondent fails to make payment as set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 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). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
37. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
39. This CAFO shall be binding upon the Respondent, its successors and assigns.

40. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

VI. Effective Date

41. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Customs Biologicals, Inc.

Docket No.: FIFRA 04-2012-3008(b)

By: Clarence J. Baugh (Signature)

Date: 3-13-12

Name: Clarence Baugh (Typed or Printed)

Title: President (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly H. Banister

Date: 3/16/12

Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 26 day of March 2012.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order In the Matter of Custom Biologicals, Inc., Docket Number: FIFRA-04-2012-3008(b), to the addressees listed below:

Mr. Steven Warm
Requested)

(via Certified Mail, Return Receipt

Attorney-at-Law
9124 S.W. 51st Road
Suite B-102
Gainesville, Florida 32608

Mrs. Dawn Johnson
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(via EPA's internal mail)

Mr. Robert Caplan
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(via EPA's internal mail)

Date: 3-26-12



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9511