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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the matter of:)	Docket No. FIFRA-9-2011- 0026
)	
NAFTA Distributors, Inc.)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	pursuant to 40 C.F.R. §§ 22.13
)	and 22.18
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA” or “Complainant”) and NAFTA Distributors, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Respondent for the sale and distribution of an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division, EPA Region IX, who has been duly delegated the authority to initiate administrative proceedings under Section 14 of FIFRA and to sign consent agreements settling such proceedings.

Respondent is a California corporation whose principle place of business is located at 5120 E. Santa Ana Street, Ontario, California.

B. APPLICABLE STATUTES AND REGULATIONS

1. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).
2. The term “pesticide” means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . .” 7 U.S.C. § 136(u).
3. The term “pest” means “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. . . .” 7 U.S.C. § 136(t).
4. 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.” 7 U.S.C. § 136(gg).
5. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

C. ALLEGED VIOLATIONS

6. Respondent is a “person,” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
7. Respondent owns and/or operates the facility located at 5120 E. Santa Ana St., Ontario, California (the “Facility”).
8. From November 2008 through January 2009, Respondent “distributed or sold” the product, Fabuloso, from the Facility, as those terms are defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

9. At all times relevant to this CAFO, the Fabuloso product that Respondent distributed or sold, Fresco Lavanda, Fresco Amenecer, Limon, and Mar Fresco, contained a label with the claim of “Antibacterial.”
10. The term “antibacterial” means that it stops the growth of bacteria, which are “pests,” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
11. Consequently, at all times relevant to this CAFO, the product Fabuloso is a “pesticide,” as this term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
12. At all times relevant to this CAFO, the pesticide, Fabuloso, was not registered under Section 3 of FIFRA.
13. On November 25, 2008, December 15, 2008, and January 6, 2009, Respondent distributed or sold Fabuloso product with the “Antibacterial” claim through 3 separate transactions to Ko-Amex.
14. Respondent’s sale or distribution of Fabuloso products with the “Antibacterial” claim to Ko-Amex constitutes 3 violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
15. The Enforcement Response Policy for FIFRA dated December 2009 provides for a penalty of \$19,500 for these violations.

D. RESPONDENT’S ADMISSIONS

16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the factual allegations contained in this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the

assessment of the civil administrative penalty under Section I.E. of this CAFO; (iv) waives any rights to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

17. In final settlement of the FIFRA violations specifically alleged in Section I.C of this CAFO, Respondent agrees to pay a civil administrative penalty of TEN THOUSAND, ONE HUNDRED AND FORTY DOLLARS (\$10,140).
18. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

AND

Julie Jordan
Pesticides Program (CED-5)
U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street
San Francisco, CA 94105

19. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
20. If Respondent fails to pay in full the civil administrative penalty by its due date, then Respondent shall pay a stipulated penalty of \$19,500, instead of the assessed penalty, immediately upon EPA's written request. In addition, failure to pay in full the civil administrative penalty by its due date may lead to any or all of the following actions:
 - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
 - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
 - c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. § 13.17.

21. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the civil administrative penalty by its due date. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins, 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum, 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs, 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. CERTIFICATION AND COMPLIANCE

22. In executing this CAFO, Respondent certifies that (1) it is no longer selling or distributing any pesticide that is unregistered in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and (2) it has complied with all other FIFRA requirements at all facilities that it owns or operates.

G. RETENTION OF RIGHTS

23. In accordance with 40 C.F.R. § 22.18(c) and as provided below, this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts

specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. In addition to any other authority, right, or remedy available to EPA, EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

24. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

25. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

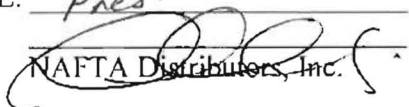
26. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

J. BINDING EFFECT

27. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
28. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT NAFTA DISTRIBUTORS, INC.

9-14-2011
DATE:

BY: Sam Machikian
TITLE: Pres.

NAFTA Distributors, Inc.

FOR COMPLAINANT EPA REGION IX:

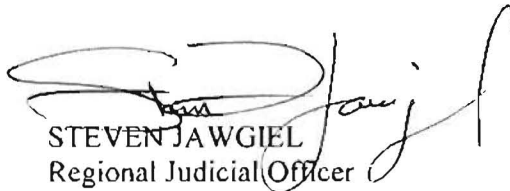
9/29/2011
DATE

BY: Katherine A Taylor
Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX

II. Final Order

EPA and NAFTA Distributors, Inc. having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2011-0026) be entered and that Respondent shall pay a civil administrative penalty in the amount of TEN THOUSAND, ONE HUNDRED FORTY DOLLARS (\$10,140), and comply with the terms and conditions set forth in the Consent Agreement. This CAFO shall become effective upon filing.

09/29/11
DATE



STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (**Docket No FIFRA-09-2011-00**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 91405, and that a true and correct copy of the same was sent to the following parties:

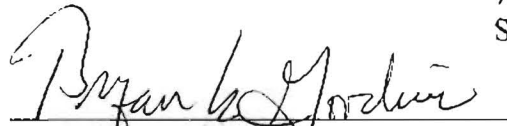
A copy was mailed via CERTIFIED MAIL to:

Mr. Sam Madikians, President
NAFTA Distributors, Inc.
5120 E. Santa Ana Street
Ontario, CA 91761

CERTIFIED MAIL NUMBER: 7007 2680 0000 5772 4429

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Ivan Lieben, Esq
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

Date

9/30/11



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

CERTIFIED MAIL

RETURN RECEIPT REQUESTED 7007 2680 0000 5772 4429

Date: SEP 30 2011

Mr. Sam Madikians, President
NAFTA Distributors, Inc.
5120 E. Santa Ana Street
Ontario, CA 91761

Subject: NAFTA Distributors, Inc.
Consent Agreement and Final Order
Docket No. FIFRA-9-2011-0026

Dear Mr. Madikians:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Sections 136 *et seq.* for the above referenced case. The terms of the CAFO require the payment to be received by EPA within 30 days of the effective date of the CAFO.

If you have any questions please contact Julie Jordan, Enforcement Officer (CED-5), telephone number 415- 947-4207 at the U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Taylor".

Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division

Enclosure

cc: Patrick Thalken, California Department of Pesticide Regulation