



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

March 29, 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0189 9347

Ms. Wendy Jonesrock
Xtreme Design Labs, Inc.
926 Country Road Labs, Inc.
Tuscola, Texas 79562

Xtreme Design Labs, Inc., Docket No. FIFRA-05-2010-0010

Dear Ms. Jonesrock:

Enclosed is a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on March 29, 2010 with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,000 is to be paid in the manner described in paragraphs 63, 64 and 65. Please be certain that the number BD 2751045P010 and the docket number are written on both the transmittal letter and on the check. Payment is due by April 28, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Estrella Calvo".

Estrella Calvo
Pesticides and Toxics Compliance Section
Chemicals Management Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Xtreme Design Labs, Inc.)
Tuscola, Texas,)
)
Respondent.)
_____)

Docket No. FIFRA-05-2010-0010
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136(a)

RECEIVED
MAR 29 2010

Consent Agreement and Final Order
Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 the 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, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5, has been delegated the authority to settle this matter.
3. The Respondent is Xtreme Design Labs, Inc., a corporation doing business in the State of Texas.
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 to 136y.

Statutory and Regulatory Background

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. §152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, except in certain circumstances which are not relevant to this case.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3.

12. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide, 40 C.F.R. § 152.15(a)(1).

13. 40 C.F.R. § 168.22(a) states that Sections 12(a)(1)(A) and (B) of FIFRA make it unlawful for any person to “offer for sale” any pesticide if it is unregistered. EPA interprets these provisions as extending to advertisements in any advertising medium to which pesticide users or the general public have access.

14. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) “means

any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

15. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

16. The term “pests” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and further defined in 40 C.F.R. §152.5(c)” 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...”

17. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. The Administrator of EPA may assess a civil penalty against any registrant, wholesaler, dealer, retailer, or other distributor 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)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

19. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. Respondent owns or operates a place of business located at 926 County Road 154, Tuscola, Texas 79562.

21. On or about May 14, 2009, Respondent submitted a label to EPA for XTREME Shield Fly Spray which stated, in relevant part: “...XTREME Shield Fly Spray is an all natural equine fly spray that repels, stable, horn, face, horse and deer flies, plus mosquitoes, gnats and bees.”

22. On or about March 5, 2009, Respondent's Internet site at www.xtremedesignproducts.peachhost.com stated, among other things: "XTREME SHIELD FLY SPRAY Our maximum strength DEA-free XTREME Shield is an all natural equine fly spray that repels, stable, horn, face, horse and deer flies, plus mosquitoes, gnats and bees..."

23. On or about March 5, 2009, Respondent's Internet site also included a price for a 32 ounce spray bottle of the XTREME Shield Fly Spray, along with a product number and a "buy now" button for the consumer.

24. On or about May 15, 2009, Respondent's Internet site at www.xtremedesignproducts.peachhost.com stated, among other things: "XTREME SHIELD FLY SPRAY Our maximum strength DEA-free XTREME Shield is an all natural equine fly spray that repels, stable, horn, face, horse and deer flies, plus mosquitoes, gnats and bees..."

25. On or about May 15, 2009, Respondent's Internet site also included a price for a 32 ounce spray bottle of the XTREME Shield Fly Spray, along with a product number and a "buy now" button for the consumer.

26. On or about May 18, 2009, Respondent's Internet site at www.xtremedesignproducts.peachhost.com stated, among other things: "XTREME SHIELD FLY SPRAY Our maximum strength DEA-free XTREME Shield is an all natural equine fly spray that repels, stable, horn, face, horse and deer flies, plus mosquitoes, gnats and bees..."

27. On or about May 18, 2009, Respondent's Internet site also included a price for a 32 ounce spray bottle of the XTREME Shield Fly Spray, along with a product number and a "buy now" button for the consumer.

28. On or about May 20, 2009, Respondent's Internet site at www.xtremedesignproducts.peachhost.com stated, among other things: "XTREME SHIELD

FLY SPRAY Our maximum strength DEA-free XTREME Shield is an all natural equine fly spray that repels, stable, horn, face, horse and deer flies, plus mosquitoes, gnats and bees...”

29. On or about May 20, 2009, Respondent’s Internet site also included a price for a 32 ounce spray bottle of the XTREME Shield Fly Spray, along with a product number and a “buy now” button for the consumer.

30. On or about May 28, 2009, Respondent’s Internet site at www.xtremedesignproducts.peachhost.com stated, among other things: “XTREME SHIELD FLY SPRAY Our maximum strength DEA-free XTREME Shield is an all natural equine fly spray that repels, stable, horn, face, horse and deer flies, plus mosquitoes, gnats and bees...”

31. On or about May 28, 2009, Respondent’s Internet site also included a price for a 32 ounce spray bottle of the XTREME Shield Fly Spray, along with a product number and a “buy now” button for the consumer.

32. On or about June 2, 2009, Respondent’s Internet site at www.xtremedesignproducts.peachhost.com stated, among other things: “XTREME SHIELD FLY SPRAY Our maximum strength DEA-free XTREME Shield is an all natural equine fly spray that repels, stable, horn, face, horse and deer flies, plus mosquitoes, gnats and bees...”

33. On or about June 2, 2009, Respondent’s Internet site also included a price for a 32 ounce spray bottle of the XTREME Shield Fly Spray, along with a product number and a “buy now” button for the consumer.

34. On or about June 16, 2009, Respondent’s Internet site at www.xtremedesignproducts.peachhost.com stated, among other things: “XTREME SHIELD FLY SPRAY Our maximum strength DEA-free XTREME Shield is an all natural equine fly spray that repels, stable, horn, face, horse and deer flies, plus mosquitoes, gnats and bees...”

35. On or about June 16, 2009, Respondent's Internet site also included a price for a 32 ounce spray bottle of the XTREME Shield Fly Spray, along with a product number and a "buy now" button for the consumer.

36. The label of XTREME Shield Fly Spray provided by Respondent on March 14, 2009 claims, states or implies that XTREME Shield Fly Spray is a pesticide.

37. Respondent's Internet site at www.xtremedesignproducts.peachhost.com claims, states or implies that XTREME Shield Fly Spray is a pesticide.

38. XTREME Shield Fly Spray is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.15(a)(1).

39. XTREME Shield Fly Spray is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

40. On or about March 5, 2009, Respondent distributed or sold XTREME Shield Fly Spray by advertising it on its Internet site.

41. On or about May 15, 2009, Respondent distributed or sold XTREME Shield Fly Spray by advertising it on its Internet site.

42. On or about May 18, 2009, Respondent distributed or sold XTREME Shield Fly Spray by advertising it on its Internet site.

43. On or about May 20, 2009, Respondent distributed or sold XTREME Shield Fly Spray by advertising it on its Internet site.

44. On or about May 28, 2009, Respondent distributed or sold XTREME Shield Fly Spray by advertising it on its Internet site.

45. On or about June 2, 2009, Respondent distributed or sold XTREME Shield Fly Spray by advertising it on its Internet site.

46. On or about June 16, 2009, Respondent distributed or sold XTREME Shield Fly Spray by advertising it on its Internet site.

Count 1

47. Complainant incorporates by reference the allegations contained in paragraphs 1 through 46 of this CAFO.

48. On May 15, 2009 Respondent distributed or sold XTREME Shield Fly Spray in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

49. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 2

50. Complainant incorporates by reference the allegations contained in paragraphs 1 through 46 of this CAFO.

51. On May 20, 2009, Respondent distributed or sold XTREME Shield Fly Spray in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

52. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 3

53. Complainant incorporates by reference the allegations contained in paragraphs 1 through 46 of this CAFO.

54. On May 28, 2009, Respondent distributed or sold XTREME Shield Fly Spray in

violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

55. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 4

56. Complainant incorporates by reference the allegations contained in paragraphs 1 through 46 of this CAFO.

57. On June 2, 2009, Respondent distributed or sold XTREME Shield Fly Spray in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

58. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 5

59. Complainant incorporates by reference the allegations contained in paragraphs 1 through 46 of this CAFO.

60. On June 16, 2009, Respondent distributed or sold XTREME Shield Fly Spray in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

61. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

62. 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 \$5,000. 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. Based on an ability to pay analysis, EPA has determined that Respondent has an ability to pay a mitigated penalty of \$5,000. Complainant also considered EPA's *Enforcement Response Policy for FIFRA* (ERP), dated July 2, 1990.

63. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,000 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for a check sent by regular U.S. Postal Service mail:]

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

[for a check sent by overnight mail:]

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

64. The check must note the case title, the docket number of this CAFO and the billing document (BD) number.

65. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the BD number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Estrella Calvo (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

68. 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

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

70. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

72. This CAFO is a "final order" for purposes of EPA's ERP for FIFRA.

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

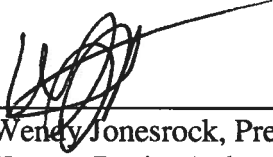
74. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

75. Each party agrees to bear its own costs and attorney's fees in this action.

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

Xtreme Design Labs, Inc., Respondent

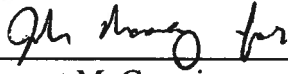
3/3/10
Date



Wendy Jonesrock, President
Xtreme Design Labs, Inc.

U.S. Environmental Protection Agency, Complainant

3/19/10
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Xtreme Design Labs, Inc.
Docket No. FIFRA-05-2010-0010

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.

3/25/10
Date

Walter W. Karalick
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

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MAR 29 2010

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U.S. ENVIRONMENTAL
PROTECTION AGENCY.

U.S. ENVIRONMENTAL
PROTECTION AGENCY

MAR 1 1 2010

OFFICE OF REGIONAL
COUNSEL

CERTIFICATE OF SERVICE

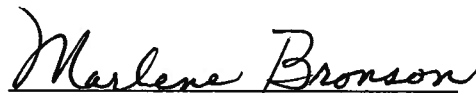
I hereby certify that an original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Xtreme Design Labs, Inc. was filed on March 29, 2010, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0189 9347, a second original signed copy to

Respondent:

Ms. Wendy Jonesrock
Xtreme Design Labs, Inc.
926 Country Road Labs, Inc.
Tuscola, Texas 79562

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Marlene Bronson
Chemicals Management Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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