

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
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**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KS 66219  
BEFORE THE ADMINISTRATOR**

**In the Matter of** )  
 ) **Docket No. FIFRA-07-2012-0034**  
**DG Ventures, Inc.** )  
 )  
 )  
**Respondent** )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and DG Ventures, Inc. (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136f.

2. This Consent Agreement and Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## Section II

### Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is DG Ventures, Inc., f/k/a Doyle Golf, Inc., a pesticide distributor with a facility located in Cedar Falls, Iowa.

## Section III

### Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean 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.

10. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

12. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

#### **Section IV**

##### **General Factual Allegations**

13. The Respondent is and was at all times referred to in this Complaint, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

14. On or about January 28, 2010, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted an inspection at Respondent’s facility at 1911 Lincoln Street, in Cedar Falls, Iowa (the facility).

15. During the inspection referenced in the preceding paragraph, the IDALS representative requested records of sales of the product, Moss Buster, from Respondent's representative, Michael Doyle, the owner and president of Doyle Golf, Inc.

16. A label for the Moss Buster product was photographed by the IDALS representative during the inspection of Respondent's facility on or about January 28, 2010.

17. The Moss Buster product label collected from Respondent by the IDALS representative had the following claims:

- "Moss Remover"
- "For use on all types of Moss!"

18. The Moss Buster product website in December 2009 contained the following claims:

- "The moss on the asphalt shingles is dessicated"
- "Moss Buster is composed of distilled plant extracts that dessicate (dry out) the moss in hours."
- "Moss Buster dessicates and dries out moss leaving you with a safer walkway!"
- "At the cellular level it quickly falls apart, decomposes and normal wind and rain remove the dessicated moss."
- "Moss and lichen's [sic] cell walls dessicate and decompose and Mother Nature takes it off."
- "Pending [EPA] registration"

19. At the time of the January 28, 2010, inspection of Respondent's facility by IDALS, the product Moss Buster was not registered as a pesticide with the EPA.

20. The Moss Buster product is a pesticide as defined by FIFRA.

21. On or about November 30, 2011, an amendment to Respondent's Articles of Incorporation was filed with the Iowa Secretary of State changing Respondent's name from Doyle Golf, Inc. to DG Ventures, Inc.

### **Violations**

22. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

#### **Count 1**

23. The facts stated in paragraphs 13 through 20 are realleged and incorporated as if fully stated herein.

24. On or about July 2, 2009, Respondent sold or distributed a quantity of the pesticide product Moss Buster to Linville Ridge CC in Linville, North Carolina.

25. On the date of the sale and/or distribution of the pesticide product Moss Buster to Linville Ridge CC, the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

26. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

#### **Count 2**

27. The facts stated in paragraphs 13 through 20 are realleged and incorporated as if fully stated herein.

28. On or about January 27, 2010, Respondent sold or distributed a quantity of the pesticide product Moss Buster to Mossyrock Hardware in Mossyrock, Washington.

29. On the date of the sale and/or distribution of the pesticide product Moss Buster to

Mossyrock Hardware, the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

30. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

### **Section V**

#### **Consent Agreement**

31. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

32. Respondent neither admits nor denies the factual allegations set forth above.

33. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

34. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

35. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

36. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

37. Respondent certifies that by signing this CAFO that it is presently in compliance

with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

38. The effect of settlement as described in the following paragraph is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in the preceding paragraph.

39. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty as set forth in Paragraph 1 of the Final Order below. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by the EPA.

40. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

41. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, the 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due

date.

## Section VI

### Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Five Thousand Seven Hundred and Twenty Dollars (\$5,720.00) within thirty (30) days of the effective date of this Final Order.

Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:



Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and

Chris R. Dudding, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT  
DG VENTURES, INC.**

Date: 3-1-13

By:

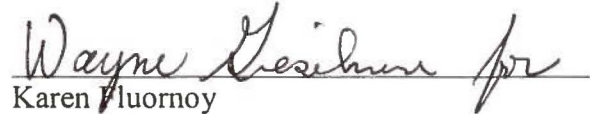
 3-15-13

MIKE DOYLE  
Print Name

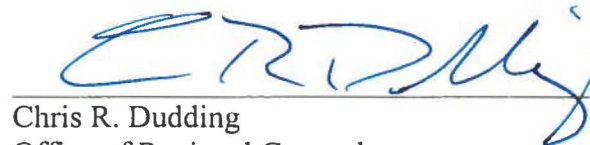
PRES  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 3-21-13

  
Karen Fluornoy  
Director  
Water, Wetlands and Pesticides Division

Date: 3/21/13

  
Chris R. Dudding  
Office of Regional Counsel

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date: 3/25/13

Karina Borromeo  
KARINA BORROMEO  
Regional Judicial Officer

IN THE MATTER OF DG Ventures, Inc., Respondent  
Docket No. FIFRA-07-2012-0034

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to  
Attorney for Complainant:

[dudding.chris@epa.gov](mailto:dudding.chris@epa.gov)

Copy emailed to Respondent:

[mike@doyle-golf.com](mailto:mike@doyle-golf.com)

Dated: 3/25/13



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7