



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

JUL 09 2009

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. Jason S. Thomas
Hunton & Williams LLP
421 Fayetteville Street
Suite 1400
Raleigh, NC 27601

SUBJ: Docket No. FIFRA-04-2009-3038(b)
Bio-Comp, Inc.

Dear Mr. Thomas:

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 \$995.67 of the assessed penalty of \$11,600 is due within 30 days from the effective date. Section V also provides information on when remaining payments are due. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you or your client have any questions about this matter or their compliance status in the future, please call me at (404) 562-8979 or Ms. Dawn Johnson at (404) 562-9017.

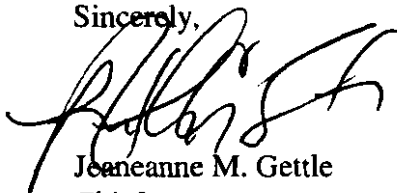
Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,



Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Shannon Joyner
NC Department of Agriculture
File #062806151301

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

REC'D
2009 JUL -8 PM 4:06
RECORDING CLERK

In the Matter of:)
)
Bio-Comp, Inc.)
)
Respondent.)
_____)

Docket No. FIFRA-04-2009-3038(5)

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 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Bio-Comp, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 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 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. 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.
4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

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

5. Respondent is Bio-Comp, Inc., a North Carolina corporation, located at 2116-B Bio-Comp Drive, Edenton, North Carolina 27932.
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 June 28, 2006, an authorized representative of the EPA conducted an inspection at Bio-Comp, Inc., 2116-B Bio-Comp Drive, Edenton, North Carolina 27932.
8. During the aforementioned inspection, the product Bio-Comp Composted Growing Mix was identified as being produced and distributed by Respondent. Also during the aforementioned inspection, a brochure describing Respondent's products was obtained. EPA determined the brochure made certain pesticidal claims. Upon being informed that the brochure may make certain pesticidal claims, Respondent contends that it ceased printing and distributing the brochure. Additionally, Respondent submitted a revised brochure to EPA.

9. The product is a “pesticide” as 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. At the time of the inspection, the Bio-Comp Composted Growing Mix was not registered as a pesticide with the EPA in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a.
12. The inspector documented the offer of sale or distribution of the Bio-Comp Composted Growing Mix from Respondent. Section 2(gg) of FIFRA 7 U.S.C. § 136(gg), defines the term “distribute or sell” to include: sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
13. 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, 7 U.S.C. § 136a.
14. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
15. At the time of the inspection, the Bio-Comp Composted Growing Mix product was misbranded.

16. According to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F) a pesticide is misbranded if its label does not contain directions for use necessary to make the product effective and to adequately protect health and the environment.
17. At the time of the inspection, the Bio-Comp Composted Growing Mix product label did not contain a warning or caution statement.
18. According to Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(F) a pesticide is misbranded if its label does not contain a warning or caution statement adequate to protect health and the environment.
19. At the time of the inspection, the Bio-Comp Composted Growing Mix product label did not contain an ingredient statement.
20. According to Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A) a pesticide is misbranded if its label does not bear an ingredient statement on the immediate container which is presented or displayed under customary conditions of purchase.
21. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is a violation for any person in any state to distribute or sell to any person any pesticide which is misbranded.
22. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
23. 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.
24. 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, and the gravity of the

violation. 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 ELEVEN THOUSAND SIX HUNDRED DOLLARS (\$11,600) 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 Administrator Order.

IV. Consent Agreement

25. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth in sections I and II above, and neither admits nor denies the factual allegations and alleged violations 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 ELEVEN THOUSAND SIX HUNDRED DOLLARS (\$11,600) which shall be paid in twelve (12) payments, which includes interest at 3%. The first payment of \$995.67 shall be paid within 30 days after the effective date of this CAFO.

The remaining 11 payments will be made as set forth below:

<u>Payment Due Date</u>	<u>Payment Due</u>
60 days of filing of the CAFO	\$995.67
90 days of filing of the CAFO	\$995.67
120 days of filing of the CAFO	\$995.67
150 days of filing of the CAFO	\$995.67
180 days of filing of the CAFO	\$995.67
210 days of filing of the CAFO	\$995.67
240 days of filing of the CAFO	\$995.67
270 days of filing of the CAFO	\$995.67
300 days of filing of the CAFO	\$995.67
330 days of filing of the CAFO	\$995.63

32. Respondent shall remit each penalty payment 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, MO 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 Management 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. 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.
35. Pursuant to 31 U.S.C. § 3717, 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. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. 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.

36. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

This CAFO shall be binding upon the Respondent, its successors and assigns.

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

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VI. Effective Date

37. 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:

Bio-Comp, Inc.
Docket No. FIFRA-04-2009-3038(b)

By: Bonnie Regulski (Signature)
Name: Bonnie Regulski (Typed or Printed)
Title: Secretary (Typed or Printed)

Date: June 11, 2009

U.S. Environmental Protection Agency

By: Carol L. Kemker
Carol L. Kemker, Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

Date: 7/2/09

APPROVED AND SO ORDERED this 8th day of July 2009.

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 Bio-Comp, Inc., Docket Number: FIFRA-04-2009-3038(b), to the addressees listed below.

Jason S. Thomas
Hunton & Williams LLP
421 Fayetteville Street
Suite 1400
Raleigh, NC 27601

(via Certified Mail, Return Receipt Requested)

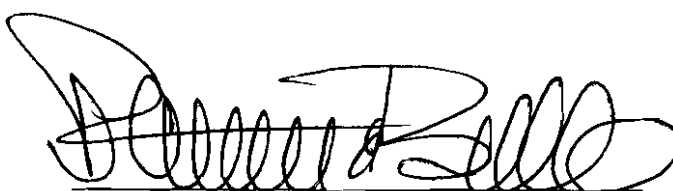
Dawn Johnson
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Bonnie Sawyer
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Date: 7-9-09



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 7/10/09 (Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9904 (Office) (Telephone Number)

- Non-SF Judicial Order/Consent Decree USAO COLLECTS
Administrative Order/Consent Agreement FMO COLLECTS PAYMENT
SF Judicial Order/Consent Decree DOJ COLLECTS
Oversight Billing - Cost Package required: Sent with bill
Other Receivable
Not sent with bill
This is an original debt
Oversight Billing - Cost Package not required
This is a modification

PAYEE: Bio Comp Inc. (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 11,600 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EIRKA 04 2009 3038(b)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office:

The IFMS Accounts Receivable Control Number is: Date

If you have any questions, please call: of the Financial Management Section at:

DISTRIBUTION:

- A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:
1. Debt Tracking Officer, Environmental Enforcement Section, Department of Justice RM 1647, P.O. Box 7611, Benjamin Franklin Station, Washington, D.C. 20044
2. Originating Office (EAD)
3. Designated Program Office
B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:
1. Originating Office
2. Regional Hearing Clerk
3. Designated Program Office
4. Regional Counsel (EAD)