



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

FEB 11 2010

Certified Mail – Return Receipt Requested

Raymond B. Cooper, Ph.D.
TotalTurf Consulting, LLC
Agent for Harrell's, LLC
26 A. A. Cooper Road
Meigs, Georgia 31765

Re: Harrell's, LLC; Docket No. FIFRA-04-2010-3003(b)

Dear Dr. Cooper:

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 assessed penalty of \$8,190 is due within 30 days from the effective date. 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 the U.S. Environmental Protection Agency's Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-9085 or Mr. Phillip Beard at (404) 562-9012.

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 (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

Jeaneanne M. Gettle

Chief

Pesticides and Toxic Substances Branch

Enclosures

cc: Shannon Joyner, NCDACS EPA Pesticide Liaison
State File No. 06120615020101

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

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION 4
2010 FEB 11 AM 7:08
HEARING CLERK

In the Matter of:)
)
Harrell's, LLC)
)
)
Respondent.)
_____)

Docket No. FIFRA-04-2010-3003(b)

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) (hereinafter "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 Harrell's, LLC.
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 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Phillip Beard
Pesticides Section
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012.

5. The Respondent is Harrell's, LLC, a Florida corporation located at 720 Kraft Road, Lakeland, Florida 33815.
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.
7. On or about June 12, 2006, an authorized representative of the EPA conducted an inspection at Firethorn Golf Club located at 4016 Troon Drive, Waxhaw, North Carolina, 28027.
8. At the time of the inspection, the "Harrell's Turf Fertilizer with Ronstar 0.95," was observed at the facility. This product is a mixture of a fertilizer and "Ronstar 0.95," an EPA registered pesticide assigned EPA Registration No. 52287-1.
9. Based on the evidence from the inspection, EPA has determined that the end-use product labeling for Ronstar 0.95 included with the blend failed to meet the labeling requirements pursuant to 40 C.F.R. Section 156, in that it failed to bear complete directions for use statements.

10. Since Respondent did not comply with the scope of the custom blender requirements found at 40 C.F.R. Section 167, the blend of a fertilizer and an EPA registered pesticide is required to be registered as a pesticide.
11. "Harrell's Turf Fertilizer with Ronstar 0.95" is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u). The definition of pesticide includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
12. 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).
13. 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.
14. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person in any State to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
15. Respondent distributed and sold the pesticide on at least one occasion as described below:

Invoice #00169108 dated September 9, 2005 to the Firethorn Golf Club

16. 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.
17. At the time of the inspection, the “Harrell’s Turf with Barricade .30,” was observed at the facility. This product is a mixture of a fertilizer and “Barricade .30,” an EPA registered pesticide assigned EPA Registration No. 8660-162.
18. Based on the evidence from the inspection, EPA has determined that the end-use product labeling for Barricade .30 included with the blend failed to meet the labeling requirements pursuant to 40 C.F.R. Section 156, in that it failed to bear complete directions for use statements.
19. Since Respondent did not comply with the scope of the custom blender requirements found at 40 C.F.R. Section 167, the blend of a fertilizer and an EPA registered pesticide is required to be registered as a pesticide.
20. “Harrell’s Turf with Barricade .30,” is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
21. Respondent distributed and sold the pesticide on at least one occasion as described below:

Invoice #00154649 dated May 5, 2005 to the Firethorn Golf Club
22. 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.
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 of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
25. 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 EIGHT THOUSAND ONE HUNDRED NINETY DOLLARS (\$8,190), 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.

III. Consent Agreement

26. 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.
27. 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.
28. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
29. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
30. 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.

31. 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.

IV. Final Order

32. Respondent is assessed a civil penalty of EIGHT THOUSAND ONE HUNDRED NINTEY DOLLARS (\$8,190), which shall be paid within 30 days from the effective date of this CAFO.
33. 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, MO 63197-9000.

The check shall reference on its face the name of the

Respondent and the Docket Number assigned to this CAFO.

34. 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;

Phillip Beard
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.

35. 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.
36. 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 principle amount not paid within 90 days of the due date.
37. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
38. This CAFO shall be binding upon the Respondent, its successors and assigns.
39. 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.

The remainder of this page was intentionally left blank.

AGREED AND CONSENTED TO:

Harrell's, LLC
Docket No. FIFRA-04-2010-3003(b)

By: Raymond B. Cooper (Signature) Date: 01-25-10
Name: Raymond B. Cooper (Typed or Printed)
Title: Agent (Typed or Printed)

U.S. Environmental Protection Agency

By: Kenneth R. Lapiere Date: 2/8/2010
Kenneth R. Lapiere, Acting Director
Air, Pesticides and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 10th day of Feb. 2010.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify on the date set out below, I have filed the original 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: Harrell's, LLC, Docket No. FIFRA 04-2010-3003(b), to the addressees listed, in the manner indicated:

Mr. Raymond B. Cooper, Ph.D.
TotalTurf Consulting, LLC
Agent for Harrell's LLC
26 A. A. Cooper Rd.
Meigs, GA 31765

(Via Certified Mail, Return Receipt Requested)

Phillip Beard
Pesticides Section
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Robert Caplan
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Date: 2-11-10



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
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 2/9/10
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(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

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Harrell's LLC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 8190
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2010 3003(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 | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |