



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 10 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ethan Ware
Attorney at law
McNair Law Firm, P.A.
1221 Main Street, Suite 1800
Columbia, South Carolina 29201

Re: Vereen's Stores
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2013-3000(b)

Dear Mr. Ware:

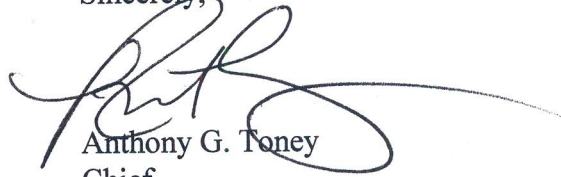
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

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 your client on notice of their potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Ms. Molly Miller of the EPA Region 4 staff at (404) 562-9684.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony G. Toney', with a long horizontal flourish extending to the right.

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Clemson Univ. Dept of Pesticide Regulation
State File No 0408101202

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2013 SEP 10 AM 9:16
HEARING CLERK

In the Matter of:)

Vereen's Stores, Inc.)

Respondent.)
_____)

Docket No.: FIFRA-04-2013-3000(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) (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 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Vereen's Stores, Inc.
2. 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 the EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter, and has the authority to sign consent agreements

memorializing settlements between the EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 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 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

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

Molly Miller
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9684.

5. Respondent is Vereen's Stores, Inc., a South Carolina corporation, located at 8862 Highway 90, Longs, South Carolina 29568.
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 by EPA

7. On or about April 8, 2010, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 16 County Camp Road, Kingtree, South Carolina.
8. On or about June 15, 2010, and September 7, 2010, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 8862 Highway 90,

Longs, South Carolina.

9. During the aforementioned inspections, Vereen's 16-7-7 Weed & Feed with Trimec and Vereen's 26-3-5 Weed & Feed with Trimec were identified as being sold and/or distributed by the Respondent.
10. Both Vereen's 16-7-7 Weed & Feed with Trimec and Vereen's 26-3-5 Weed & Feed with Trimec are pesticides. The term pesticide is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
11. 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).
12. Respondent distributes or sells pesticides. The term to distribute or 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.
13. With certain exceptions not pertinent in this matter, pesticides that are sold and distributed in the United States are required to be registered with the EPA, as set forth in Section 3 of FIFRA.
14. 40 C.F.R. § 152.132 sets forth the requirements pertaining to supplemental distribution of a registered pesticide.

15. Respondent had a supplemental distribution agreement with PBI/Gordon Corporation to produce and distribute the pesticide Vereen's 16-7-7 Weed & Feed with Trimec as the distributor product of Gordon's Trimec Weed & Feed for Southern Lawns, EPA Reg. No. 2217-661.
16. Under the terms of the supplemental distribution agreement and in accordance with 40 C.F.R. § 152.132, Vereen's can produce and distribute Vereen's 16-7-7 Weed & Feed with Trimec under EPA Reg. No. 2217-661-71327.
17. Respondent used a different manufacturing product than that prescribed by the registrant PBI/Gordon Corporation to produce Vereen's 16-7-7 Weed & Feed with Trimec.
18. The Vereen's 16-7-7 Weed & Feed with Trimec which was produced in a manner not prescribed by the registrant is considered to be an unregistered pesticide.
19. The inspector documented at least ten distributions and/or sales of the unregistered pesticide Vereen's 16-7-7 Weed & Feed with Trimec between March 23, 2009, and April 23, 2010.
20. Respondent also had supplemental distribution agreements with PBI/Gordon Corporation to produce and distribute the pesticide Vereen's 26-3-5 Weed & Feed with Trimec as the distributor product of Gordon's Trimec Weed & Feed for Southern Lawns, EPA Reg. No. 2217-661 and Gordon's Trimec DMA Herbicide + Turf Fertilizer, EPA Reg. No. 2217-806.
21. Under the terms of these supplemental distribution agreements, Vereen's can produce and distribute Vereen's 26-3-5 Weed & Feed with Trimec under EPA Reg. No. 2217-661-71327 or EPA Reg. No. 227-806-71327.

22. Gordon's Trimec Weed & Feed for Southern Lawns, EPA Reg. No. 2217-661 and Gordon's Trimec DMA Herbicide + Turf Fertilizer, EPA Reg. No. 2217-806 contain the same active ingredients in the same percentage amounts.
23. Respondent used a different manufacturing product than that prescribed by the registrant PBI/Gordon Corporation to produce Vereen's 26-3-5 Weed & Feed with Trimec.
24. The Vereen's 26-3-5 Weed & Feed with Trimec which was produced in a manner not prescribed by the registrant is considered to be an unregistered pesticide.
25. The inspector documented at least four offers for distribution and/or sale of the unregistered pesticide Vereen's 26-3-5 Weed & Feed with Trimec between March 24, 2010, and May 16, 2010.
26. 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, except to the extent that distribution has been authorized by the Administrator of the EPA.
27. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least 14 occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
28. The label on Vereen's 16-7-7 Weed & Feed with Trimec is considered false or misleading since it bore EPA Reg. No. 2217-661-7137 but was not produced in accordance with the registrant's specifications for the registered EPA pesticide assigned EPA Reg. No. 2217-661.
29. The label on Vereen's 16-7-7 Weed & Feed with Trimec is considered false or misleading since it had language in the Precautionary Statements and Directions for Use

that differed from the EPA-accepted label of the registered EPA pesticide assigned EPA Reg. No. 2217-661.

30. The label on Vereen's 16-7-7 Weed & Feed with Trimec failed to bear the name and address of Vereen's Stores, Inc., or PBI/Gordon Corporation.
31. The inspector documented at least ten offers for distribution and/or sale of the misbranded pesticide Vereen's 16-7-7 between March 23, 2009, and April 23, 2010.
32. The label on Vereen's 26-3-5 Weed & Feed with Trimec is considered false or misleading since it bore EPA Reg. No. 2217-661-7137 or EPA Reg. No. 2217-806-71327 but was not being produced in accordance with the registrant's specifications for the registered EPA pesticides assigned EPA Reg. No. 2217-661 and EPA Reg. No. 2217-806.
33. The label on Vereen's 26-3-5 Weed & Feed with Trimec is considered false or misleading since it had language in the Precautionary Statements and Directions for Use that differed from the EPA-accepted labels of the registered EPA pesticides assigned EPA Reg. No. 2217-661 and EPA Reg. No. 2217-806.
34. The label on Vereen's 26-3-5 Weed & Feed with Trimec failed to bear the name and address of Vereen's Stores, Inc., or PBI/Gordon Corporation.
35. The inspector documented at least four offers for distribution and/or sale of the misbranded pesticide Vereen's 26-3-5 between March 24, 2010, and May 16, 2010.
36. Section 2 of FIFRA, 7 U.S.C. § 136, defines the term misbranded to include a label which bears a false or misleading statement and which fails to bear the name and address of the producer, registrant, or person for whom produced.

37. Under Section 12(a)(1)(E) 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 misbranded.
38. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least 14 occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
39. 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.
40. 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.
41. 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 **SEVENTY-SIX THOUSAND THREE HUNDRED AND THIRTY DOLLARS (\$76,330)** 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.

IV. Consent Agreement

42. 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.
43. 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.
44. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.

45. Respondent certifies that to the best of its knowledge as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
46. 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 for any violation not expressed herein. 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.
47. 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

48. Respondent is assessed a civil penalty of **SEVENTY-SIX THOUSAND THREE HUNDRED AND THIRTY DOLLARS (\$76,330)**. Four payments will be made to complete payment of the entire civil penalty including interest, with the final payment due two years from the filing of the CAFO. The first installment is due within 30 days of the effective date of this CAFO. The subsequent three payments shall be due as set forth in the table below. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **SEVENTY-SEVEN THOUSAND ONE HUNDRED THIRTY-SEVEN DOLLARS AND EIGHTY-THREE CENTS (\$77,137.83)**. Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days of filing of CAFO	\$19,284.46
2	within 264 days of filing of CAFO	\$19,284.46
3	within 497 days of filing of CAFO	\$19,284.46
4	within 730 days of filing of CAFO	\$19,284.45.

49. 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, Missouri 63197-9000.

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

50. 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;

Molly Miller
 Pesticides Section
 U.S. EPA - Region 4
 61 Forsyth Street
 Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
 Office of Environmental Accountability
 U.S. EPA - Region 4
 61 Forsyth Street
 Atlanta, Georgia 30303-8960.

51. 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 effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.
52. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
53. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **SEVENTY-SIX THOUSAND THREE HUNDRED AND THIRTY DOLLARS (\$76,330)** within 30 days of the effective date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

54. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). 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.
55. 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.
56. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
57. This CAFO shall be binding upon the Respondent, its successors and assigns.
58. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

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Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Vereen's Stores, Inc.
Docket No.: FIFRA 04-2013-3000(b)

By: Sarah V. Dicola (Signature) Date: 8/25/13


Name: Sarah V Dicola (Typed or Printed)

Title: VP of Finance (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 9-4-13
Carol L. Kemker, Acting Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 9 day of Sept. 2013.


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 Vereen's Stores, Inc., Docket Number: FIFRA-04-2013-3000(b), to the addressees listed below:

Ethan Ware (via Certified Mail, Return Receipt Requested)
Attorney at law
McNair Law Firm, P.A.
1221 Main Street, Suite 1800
Columbia, South Carolina 29201

Molly Miller (via EPA's internal mail)
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Ellen Rouch (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Date: 9-10-13



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9511