



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

JAN 14 2016

CERTIFIED SERVICE MAIL

Dana Stotsky, Esq  
Jacobs Stotsky PLLC  
Attorney at Law  
1629 K Street, NW, Suite 300  
Washington, D.C. 20006

Re: EcoActive Surfaces, Inc.  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2015-3125(b)

Dear Mr. Stotsky:

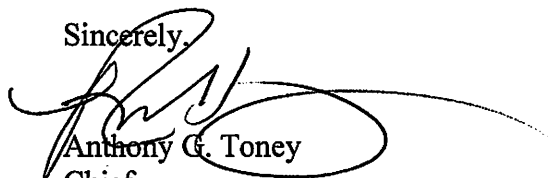
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please have your client refer to Section V of the CAFO for penalty information and payment requirements. Please inform your client that in order 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." Please inform your client that this document puts him/her on notice of their potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. 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 Dr. Karen Hill of the EPA Region 4 staff at (404) 562-8972.

Sincerely,

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

Anthony G. Toney

Chief

Chemical Safety and Enforcement Branch

Enclosure

cc: Sarah Oglesby, FDACS

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA**

RECEIVED  
EPA REGION IV

2016 JAN 14 AM 7:09

HEARING CLERK

**In the Matter of:** )  
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EcoActive Surfaces, Inc. )  
 )  
Respondent. )  
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**Docket No.:** FIFRA-04-2015-3180(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. Respondent is EcoActive Surfaces, Inc. (EcoActive Surfaces).
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by the 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 the 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 Respondent.

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 the EPA in this proceeding:

Karen M. Hill  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-8972.

5. Respondent EcoActive Surfaces is licensed to do business in the State of Florida.
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 August 17, 2010, an authorized representative of the EPA conducted an inspection at EcoActive Surfaces former facility located at 555-D NE 27th Street, Pompano Beach, Florida 33064.

8. On December 16-17, 2014, the EPA inspectors conducted an inspection at the Respondent's current facility located at 101 North Federal Highway, Suite 600, Boca Raton, Florida 33432.
9. During the August 2010 inspection above-referenced in paragraph 7, the inspector collected a documentary sample label of the product, "OxiTitan," which bore claims for the control and mitigation of micro-organisms that pose a threat to human health including, but not limited to, disease transmitting bacteria or viruses. The affixed label explicitly made certain claims including, but not limited to, "OxiTitan provides an antimicrobial coating," "OxiTitan is anti-pathogenic" and "OxiTitan has been shown to reduce microbial contamination."
10. Further, during the inspection dated August 2010, and the EPA's on-going investigation, the EPA gathered information including, but not limited to, sales invoices and a printed ledger of sales transactions that documented that the Respondent distributed and/or sold "OxiTitan" on at least eleven separate occasions.
11. Based on the claims stated on the label affixed to "OxiTitan," described above in paragraph 9, the EPA determined that "OxiTitan" is a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that it is a 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. Further, “OxiTitan” is an antimicrobial pesticide as defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), in that the products are intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.
14. Based on the information gathered during the August 2010 inspection, and the EPA’s on-going investigation, described above in paragraph 10, the EPA determined that “OxiTitan” was being distributed and/or sold by the Respondent as defined in Section 2(gg) of FIFRA.
15. 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.
16. At the time the EPA conducted the inspection on December 16-17, 2014, referenced above in paragraph 8, the product “OxiTitan” was not registered as a pesticide with the EPA, as required by Section 3 of FIFRA, 7 U.S.C. §-136a.
17. Pursuant to 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.
18. As set forth in paragraph 10, the Respondent offered for distribution and/or sale the unregistered pesticide “OxiTitan,” on at least eleven separate occasions, in violation of 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.
19. 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.

20. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the 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(s).
21. The Respondent asserted an ability to pay claim and submitted financial information to the EPA for consideration. Based on the EPA's review of the Respondent's financial information, the EPA has assessed, and the Respondent has agreed to pay a total civil penalty of **ONE THOUSAND DOLLARS (\$1,000)** to resolve the above-described violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

#### **IV. Consent Agreement**

22. 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.
23. 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.
24. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
25. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA as it relates to the product, "OxiTitan," or any other pesticide products it produces, sells or distributes with the same formulation as "OxiTitan."
26. Compliance with this CAFO shall resolve the allegations of the violation contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the 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.

27. 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**

28. Respondent is assessed a civil penalty of **ONE THOUSAND DOLLARS (\$1,000)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
29. Respondent shall remit payment of the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America."

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

Payment of the penalty shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

Address for payment by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1818.



30. 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 S.W.  
Atlanta, Georgia 30303-8960;

Karen M. Hill  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street S.W.  
Atlanta, Georgia 30303-8960; and

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

31. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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. 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, the 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.

32. 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.
33. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
34. This CAFO shall be binding upon the Respondent, its successors and assigns.
35. 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.

**THIS SECTION INTENTIONALLY LEFT BLANK**

**VI. Effective Date**

36. 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:**

**Respondent:** EcoActive Surfaces, Inc.

**Docket No.:** FIFRA-04-2015-3125(b)


By:  (Signature)

Date: 12/30/15

Name: Stewart Averett (Typed or Printed)

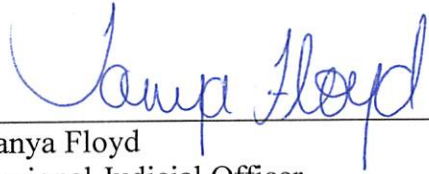
Title: President (Typed or Printed)

**Complainant:** U. S. Environmental Protection Agency

By:   
Beverly H. Banister, Director  
Air, Pesticides and Toxics Management Division

Date: 1-11-16

APPROVED AND SO ORDERED this 13<sup>th</sup> day of January 2015.<sup>6</sup>



Tanya Floyd  
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 EcoActive Surfaces, LLC, Docket Number: FIFRA-04-2015-3125(b), to the addressees listed below.

Dana Stotsky, Esq. (via United Parcel Service)  
Jacob Stotsky PLLC  
1629 K Street, NW  
Suite 300  
Washington, D.C. 20006

Ms. Marlene Tucker (via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Mr. Robert Caplan (via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

1-14-16  
DATE

  
Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
404-562-9511