

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

2008 JAN 17 PM 1:25
HEARING ROOM
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In the Matter of:)
)
Jack's Magic Products, Inc.,)
)
)
Respondent.)
_____)

Docket No. FIFRA-04-2007-3017

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (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 Jack's Magic Product, Inc.
2. On June 25, 2007, EPA filed a Complaint against Respondent.
3. 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, this Consent Agreement and Final Order (CAFO) will conclude this matter.

II. Preliminary Statements

4. 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 Regional Administrators by EPA Delegation 5-14, dated May 11, 1994.
5. 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:

Marlene J. Tucker
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9536.
6. Respondent is incorporated in the State of Florida and is located at 12435 73rd Court, Largo, Florida 33773.
7. Respondent owns and operates a business that manufactures various chemical products for use in swimming pools.
8. 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.
9. Complainant alleges that Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 CFR. § 167.3 and 40 CFR. § 169.1.
10. On or about February 7, 2006, an inspector duly appointed by the EPA Administrator, conducted an inspection at Jack’s Magic Products, Inc.
11. During the February 7, 2006 inspection, the inspector identified the following products as being offered for sale by Jack’s Magic Products Inc.: “Formula Three Product” and “the All Fixedup Stuff”. The inspector obtained evidence documenting at least five shipments

of the “Formula Three Product” (sold as part of the “Jack in a Box Kit”), and “the All Fixedup Stuff”.

12. Complainant alleges that the Formula Three Product and the All Fixedup Stuff are pesticides as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that it is a substance or mixtures of substances intended for preventing, destroying, repelling, or mitigating a pest.
13. 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 micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).
14. Furthermore, Complainant alleges the Formula Three Product and the All Fixedup Stuff are antimicrobial pesticides as defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), in that an antimicrobial pesticide is a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.
15. Complainant alleges Respondent “distributes or sells” pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
16. At the time of the inspection, the Formula Three Product and the All Fixedup Stuff being distributed by the Respondent were not registered with the EPA.
17. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person a pesticide that is not registered.
18. Therefore, Complainant alleges that Respondent violated Section 12(a)(1)(A) of FIFRA,

7 U.S.C. § 136j(a)(1)(A), at least five separate times based on the five individual shipments of the Formula Three Product and the All Fixedup Stuff.

III. Consent Agreement

19. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above, but neither admits nor denies any findings of fact or conclusion of law contained herein.
20. 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.
21. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
22. Subject to Paragraph 29, below, Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
23. Respondent certifies that as of the date of its execution of this CAFO, it no longer distributes or sells the product identified as “Formula Three”.
24. Within 30 days of the effective date of the CAFO, Respondent shall correspond with and coordinate with EPA concerning the language contained on the label for the “All Fixedup Stuff” and, if it is determined by EPA that such labels require revision, Respondent shall submit revised language to EPA to correct the label for the All Fixedup Stuff product. Both parties shall act in good faith and such revisions, if deemed necessary by EPA, shall be submitted within sixty (60) days of the date of this CAFO. Respondent shall correspond with and, if necessary, submit the revised language via certified mail or email in pdf format to:

Melba Table
Life Scientist
U.S EPA-Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
Email address: Table.Melba@epa.gov.

25. Within 60 days of receiving approval from EPA stating that the revised language for the label is in compliance with FIFRA, in that the label bears no language that claims the product is a “pesticide”, Respondent shall affix the approved label to all new productions of the All Fixedup Stuff products that are distributed and sold by the Respondent including products sold on the internet, as well as any existing All Fixedup Stuff products in stock at Respondent’s facility.
26. Within 60 days of receiving approval from EPA stating that the revised label for the All Fixedup Stuff product is in compliance with FIFRA, in that the label bears no language that claims the product is a “pesticide”, Respondent shall correct the language in any newly published brochures and website pages by replacing the former language with the EPA approved language.
27. Within 60 days of receiving approval from EPA stating that the revised label for the All Fixedup Stuff product is in compliance with FIFRA, in that the label bears no language that claims the product is a “pesticide”, Respondent shall submit a certified statement to the individual above-referenced in Paragraph 24, certifying that the Respondent has affixed the corrected label to all new production and existing production of the All Fixedup Stuff products that are in stock at Respondent’s facility, and revised the language in any newly published brochures and existing website pages.
28. Respondent shall comply with the schedules set forth in Paragraphs 24 through 27, and

Respondent acknowledges that failure to comply with the terms of the CAFO will result in stipulated penalties according to the following schedule:

Compliance Delay	Stipulated Penalty
1-30 days	\$50 per day
31-60	\$75 per day
Over 60 days	\$100 per day

29. Compliance with this CAFO shall resolve the allegation of the violations contained herein. Respondent shall not be subject to any enforcement action with respect to the allegation of the violations contained herein, for the All Fixedup Stuff product for any period prior to entry of this CAFO or during the interim period in which Respondent is required to submit the revised label to EPA, obtain approval, affix the new label and correct newly published brochures and website pages, as specified in Paragraphs 24 through 27. 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 FIFTEEN THOUSAND DOLLARS (\$15,000) plus 4% interest per annum.

32. Payment shall be made in four installments in the following amounts and according to the following schedule:

- \$3750.00 within (30) days of the effective date of this CAFO
- \$3825.25 within (120) days of the effective date of this CAFO
- \$3825.25 within (240) days of the effective date of this CAFO
- \$3825.25 within (360) days of the effective date of this CAFO.

33. Respondent shall pay the penalty by forwarding a cashier's or certified check for each installment, payable to the "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lock Box 371099M
Pittsburgh, PA 15251-7099

Each check shall reference on its face "Docket No. FIFRA-04-2007-3017".

34. At the time of each installment 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
Sam Nunn Atlanta Federal Center
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 constitutes 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 dates 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 dates as outlined in paragraph 32 of this CAFO.
37. Complainant and Respondent shall bear their own cost and attorney fees in this matter.
38. This CAFO shall be binding upon the Respondent, its successors and assigns. 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 legally bind that party to this CAFO.

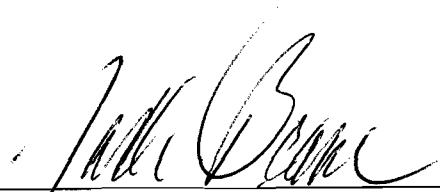
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VI. Effective Date

39. 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:

Jack's Magic Products, Inc.

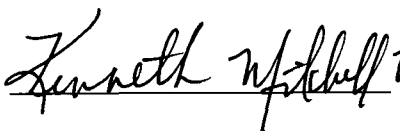
By: 

Date: 11-26-07

Name: Jack Beane

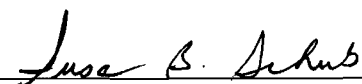
Title: President

U.S. Environmental Protection Agency

By:  for Date: 1/10/08

Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 16th day of January 2008 JSS


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a true and correct copy of the foregoing Consent Agreement and Final Order, **In the Matter of Jack's Magic Products, Inc. Docket No. FIFRA-04-2007-3017** on the parties listed below in the manner indicated:

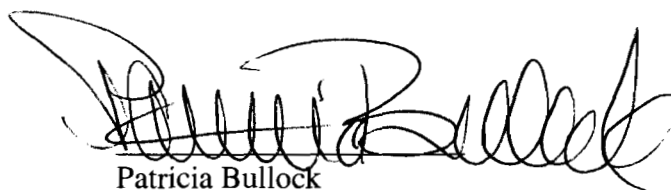
Complainant/Designee Authorized to Receive Service (Via EPA's Internal Mail)

Marlene J. Tucker
USEPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Respondent/Designee Authorized to Receive Service (Via Certified Mail-Return Receipt Requested)

Paul Quin, Esq.
Saxon, Gilmore, Carraway,
Gibbons, Lash & Wilcox, PA.
Southtrust Plaza
201 E. Kennedy Boulevard
Suite 600
Tampa, Florida 33602

1-17-08
Date



Patricia Bullock
Regional Hearing Clerk
USEPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 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 J Wilson on 1/10/08
(Name) (Date)

in the OEH 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

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Jack's Magic Products Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 15000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIERA 04 2007 3017

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT 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) |



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

17 2008

**Certified Mail
Return Receipt Requested**

Paul Quin, Esq.
Saxon, Gilmore, Carraway,
Gibbons, Lash & Wilcox, PA.
Southtrust Plaza
201 E. Kennedy Boulevard, Suite 600
Tampa, Florida 33602

Re: In the Matter of Jack's Magic Products, Inc.,
Docket No. FIFRA-04-2007-3017

Dear Mr. Quin:

Enclosed is a copy of the ratified Consent Decree and Final Order (CAFO) in this matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.05(a) of the Consolidated Rules of Practice, as amended. Pursuant to paragraph 32, the first installment payment is due within 30 days of the effective date of the CAFO, which is the date the CAFO is filed with the Regional Hearing Clerk. Any questions regarding the processing of your penalty may be directed to Ms. Lori L. Weidner, Financial Office, at (513) 487-2125.

Also enclosed is a copy of the "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 the Environmental Protection Agency (EPA). Please note that the contact telephone number on page 3 of the Notice has been changed to (200) 551-3115.

Should you have any additional questions, please contact Marlene J. Tucker at (404) 562-9536.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeannette M. Gettle", with a long, sweeping flourish extending to the right.

Jeannette M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosure