



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

September 29, 2020

VIA EMAIL ONLY

Ms. JoAnn Allender
Representative for Surgical Lasers Inc.
AMG Customs Solutions Inc.
150 South 8th Street #1554
Lewiston, NY 14092
jallender@amgcustoms.com

Consent Agreement and Final Order
In the Matter of Surgical Lasers Inc.
Docket Number FIFRA-05-2020-0043

Ms. Allender:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 29, 2020 with the Regional Hearing Clerk.

The civil penalty in the amount of \$8,900 is to be paid in the manner described in paragraphs 32-33. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

ABIGAIL
WESLEY

Digitally signed by
ABIGAIL WESLEY
Date: 2020.09.11
15:38:00 -05'00'

Abigail Wesley
Pesticides and Toxics Compliance Section

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA. These regulations are found at 19 C.F.R. Part 12.110 *et seq.* See also 19 C.F.R. § 12.1(b).

11. 19 C.F.R. § 12.111 states, in pertinent part, that imported devices must not bear any statement, design, or graphic representation that is false or misleading in any particular.

12. 19 C.F.R. § 12.112(a) states, in pertinent part, that an importer desiring to import devices into the United States shall submit to the EPA, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides or Devices (NOA) on U.S. EPA Form 3540-1.

13. The term “importer” is defined at 19 C.F.R. § 101.1 as the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be the importer of record.

14. 40 C.F.R. § 152.500 sets forth the requirements for devices under FIFRA including specifying that a device is subject to the requirements set forth in Section 7 of FIFRA and 40 C.F.R. Part 167.

15. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), states that it shall be unlawful for any person in any State to distribute or sell to any person any device which is misbranded.

16. Section 2(q)(1)(D), 7 U.S.C. § 136(q)(1)(D), defines misbranded to include a device that does not bear the registration number as assigned under Section 7 of FIFRA to each establishment in which the device was produced.

17. The term “device” is defined at Section 2(h) of FIFRA, 7 U.S.C. § 136(h) as any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest.

18. The term “pest” is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t) as, in pertinent part, any form of virus, bacteria, or other micro-organism. See also 40 C.F.R. § 152.5(d).

19. The term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

20. The term “to distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.

Factual Allegations and Alleged Violations

21. Respondent is, and was at all times relevant to this CAFO, a corporation and, therefore, is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. Respondent is, and was at all times relevant to this CAFO, an “importer” as that term is defined in 19 C.F.R. § 101.1.

23. **Comvat Duo₃** is a device as defined by FIFRA and its regulations.

24. On or about September 4, 2020, Respondent imported a device, **Comvat Duo3**, (Entry Number 93P-00142974) into the United States.

25. The device identified under the import shipment did not bear the EPA Establishment number that was assigned under Section 7 to each establishment in which each device was produced.

26. On or about September 8, 2020, EPA requested that U.S. Customs and Border Protection place the import shipment of **Comvat Duo3**, under an intensive status, because the device did not include the EPA establishment number in which it was produced and therefore were misbranded.

27. On or about September 4, 2020, Respondent distributed or sold a device, **Comvat Duo3**, as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Count 1

28. The preceding paragraphs are incorporated by reference.

29. Respondent's failure to bear the EPA Establishment number on the device, **Comvat Duo3**, constitutes a violation of Section 12(a)(1)(F) of FIFRA.

30. Respondent's violation of Section 12(a)(1)(F) of FIFRA subjects Respondent to the issuance of an Administrative Complaint assessing a separate civil penalty under Section 14(a) of FIFRA.

Civil Penalty and Other Relief

31. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

32. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$8,900.

33. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,900 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "Surgical Lasers Inc." and the docket number of this CAFO.

Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk
whitehead.ladawn@epa.gov

Abigail Wesley
wesley.abigail@epa.gov

Nidhi K. O'Meara
omeara.nidhi@epa.gov

34. This civil penalty is not deductible for federal tax purposes.

35. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate

United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

36. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

37. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses for their respective representatives:

omeara.nidhi@epa.gov (attorney for Complainant), and jallender@amgcustoms.com (representative for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

39. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

40. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

41. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for FIFRA.

42. The terms of this CAFO bind Respondent, its successors, and assigns.

43. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorney’s fees, in this action.

45. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
Surgical Lasers Inc.**

Surgical Lasers Inc.

11/09/2020
Date

Gordon Willox
Gordon Willox, President
Surgical Lasers Inc.

**In the Matter of:
Surgical Lasers Inc.**

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2020.09.23
16:16:58 -05'00'

Date

Michael D. Harris, Director
Enforcement & Compliance Assurance Division

In the Matter of:
Surgical Lasers Inc.
Docket No. FIFRA-05-2020-0043

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2020.09.28
10:36:09 -05'00'

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Surgical Lasers Inc.
Docket Number: **FIFRA-05-2020-0043**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number FIFRA-05-2020-0043, which was filed on September 29, 2020, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Ms. Nidhi K. O'Meara
omeara.nidhi@epa.gov

Copy by E-mail to
Representative for Respondent: Ms. JoAnn Allender
AMG Customs Solutions Inc.
150 South 8th Street #1554
Lewiston, NY 14092
jallender@amgcustoms.com

Copy by E-mail to
Regional Judicial Officer: Ms. Ann Coyle
coyle.ann@epa.gov

Dated: September 29, 2020

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5