



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 11 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Deborah A. Chadbourne
Attorney at Law
Deborah A. Chadbourne, LLC
529 Bierys Bridge Road
Bethlehem, Pennsylvania 18107

Re: Sergeant's Pet Care Products, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2013-3009(b)

Dear Ms. Chadbourne:

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 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 client's 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", written over a circular stamp or seal.

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures
cc: Kathy Booker, TDA

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2013 JUN 11 PM 12:39
HEARING CLERK

In the Matter of:)
Sergeant's Pet Care Products, Inc.)
Respondent.)

Docket No.: FIFRA-04-2013-3009(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 Sergeant's Pet Care Products, Inc., 4366 Malone Road, Memphis, Tennessee 38118.
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 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 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 Sergeant's Pet Care Products, Inc., a Michigan corporation, authorized to do business in Tennessee, and currently located at 10077 South 134th Street, Omaha, Nebraska 68138. At dates and times referenced herein, Respondent was located at 4366 Malone Road, Memphis, Tennessee 38118.
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 September 1, 2009, an authorized representative of the EPA conducted an inspection at PetSmart, 1460 Koester Drive, Forsyth, Illinois 62535.

8. The inspection revealed PetSmart offered for sale the product Sentry PurrScriptions Squeeze-On for Cats and Kittens under 5 lbs., EPA Reg. No. 69332-4-2517, lot number 1529P11, which was purchased from Respondent.
9. At the time of the inspection, the outside label of Sentry PurrScriptions Squeeze-On for Cats and Kittens under 5 lbs. bore EPA Establishment No. 2517-TN-01, which is the establishment number assigned to Sergeant's Pet Care Products, Inc., located at 4418 Malone Road, Memphis, Tennessee 38118.
10. Sentry PurrScriptions Squeeze-On for Cats and Kittens under 5 lbs. is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes 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. At the time of the inspection, the labels for lot number 1529P11 affixed to the three individual tubes of Sentry PurrScriptions Squeeze-On for Cats and Kittens under 5 lbs. inside the outer packaging incorrectly bore EPA Reg. No. 2517-87. The inside label also bore a silhouette of a cat inside a circle with a diagonal line through the cat silhouette, which indicates the product is not safe for use on cats.
13. Respondent "distributes or sells" the pesticide Sentry PurrScriptions Squeeze-On for Cats and Kittens under 5 lbs. to PetSmart. 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.

14. Respondent shipped the pesticide Sentry PurrScriptions Squeeze-On for Cats and Kittens under 5 lbs, EPA Reg. No. 69332-4-2517 from lot number 1529P11 to PetSmart at least nine times.
15. Prior to notice by the Complainant on or about August 16, 2010, of the September 1, 2009, inspection, Respondent asserts it had become aware of the misbranding of Sentry PurrScriptions Squeeze-On for Cats and Kittens under 5 lbs, EPA Reg. No. 69332-4-2517, lot number 1529P11, and took prompt corrective actions.
16. Pursuant to Section 2(q) of FIFRA, 7 U.S.C. § 136(q), a pesticide is misbranded if its label bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
17. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide that is misbranded. Sentry PurrScriptions Squeeze-On for Cats and Kittens under 5 lbs., EPA Reg. No. 69332-4-2517, lot number 1529P11, was misbranded by being false and misleading in that the inside label bore an incorrect EPA Registration Number and also bore a silhouette of a cat inside a circle with a diagonal line through the cat silhouette, which indicates the product is not safe for use on cats.
18. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least nine occasions and is therefore subject to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
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 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.
21. 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 **THIRTY THOUSAND EIGHT HUNDRED AND EIGHTY DOLLARS (\$30,880)** 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

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 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.
26. Compliance with this CAFO shall fully and finally resolve the allegations of the violations contained herein concerning Sentry PurrScriptions Squeeze-On for Cats and Kittens under 5 lbs, EPA Reg. No. 69332-4-2517, lot number 1529P11. 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.

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 **THIRTY THOUSAND EIGHT HUNDRED AND EIGHTY DOLLARS (\$30,880)** which shall be paid within 30 days from the effective date of this CAFO.
29. Respondent shall remit the penalty by electronic transfer or by either a cashier's, certified or corporate check made payable to the "Treasurer, United States of America," and if by check, 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.

If paying through the Automated Clearing House, electronic funds transfer option, make the payment through:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental
Protection Agency
CTX Format Transaction Code 22-checking

30. At the time of payment, Respondent shall send a separate copy of the check or electronic transfer record 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.

31. 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.
32. 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. 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.
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. 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

VI. Effective Date

35. 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: Sergeant's Pet Care Products, Inc.
Docket No.: FIFRA-04-2013-3009(b)

By: Deborah A. Chadbourne (Signature)

Date: May 22, 2013

Name: Deborah A. Chadbourne (Typed or Printed)

Title: Attorney for Sergeant's Pet Care Products, Inc. (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Carol G. Kemper for
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

Date: 6/5/13

APPROVED AND SO ORDERED this 10 day of June 2013.

Susan B. Schub
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 Sergeant's Pet Care Products, Inc., Docket Number: FIFRA-04-2013-3009(b), to the addressees listed below:

Deborah A. Chadbourne
Attorney at Law
529 Bierys Bridge Road
Bethlehem, Pennsylvania 18107

(via Certified Mail, Return Receipt Requested)

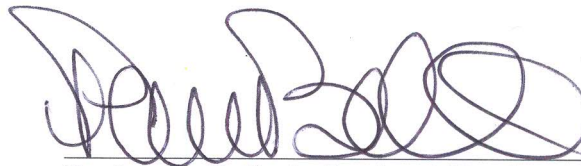
Molly Miller
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(via EPA's internal mail)

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

(via EPA's internal mail)

Date: 6-11-13



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