



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAY 04 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Shaun Koch
President
No More Fleas Please, Inc.
4404 Pebble Pond Drive
Charlotte, North Carolina 27603

Re: Docket No. FIFRA-04-2010-3033(b)
No More Fleas Please, Inc.

Dear Mr. Koch:

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.

As stated in Section V of the CAFO, the assessed penalty of \$1,500 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the Docket Number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. Environmental Protection Agency's Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mrs. Miller at (404) 562- 9684.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

HEARING CLERK

2010 MAY -4 PM 2:37

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
No More Fleas Please, Inc.) Docket No. FIFRA-04-2010-3033(b)
)
Respondent.)
_____)

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. § 1361(a) (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 No More Fleas Please, Inc.
2. 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(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

No More Fleas Please, Inc.
Docket No. FIFRA-04-2010-3033(b)

II. Preliminary Statements

3. 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.
4. 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:

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

5. The Respondent is No More Fleas Please, Inc., located at 4404 Pebble Pond Drive, Charlotte, North Carolina.
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 October 21, 2008, an inspector, duly appointed by the EPA Administrator, inspected Respondent’s facility located at 4404 Pebble Pond Drive, Charlotte, North Carolina, and also inspected Respondent’s website at www.nomorefleasplease.com.
8. During the aforementioned inspection, the inspector reviewed various sizes of kits containing the largest available dose of one of the following EPA registered pesticides: “Frontline Plus,” “Advantage,” or “K9 Advantix.” The kits are packaged with a syringe, glass vial, and dosing instructions to use the amount

- intended as a single dose for a large dog as multiple doses for smaller animals.
- These products are hereinafter referred to as “the kits.”
9. At the time of the inspection, “the kits” were offered for sale by Respondent.
 10. “The kits” are pesticides as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that they are substances or mixtures of substances intended for preventing, destroying, repelling, or mitigating a 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 micro-organisms 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. At the time of the inspection, “the kits” were not registered as pesticides with EPA.
 14. 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 by EPA.
 15. Respondent violated 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.

16. On or about December 18, 2009, an inspector, duly appointed by the EPA Administrator, reviewed Respondent's website: www.nomorefleasplease.com.
17. During the aforementioned review, the inspector observed the registered pesticide "Frontline Plus" offered for sale as "3 Month Frontline Plus / EPA No Box" in various sizes described as "one half of a 6 pack." These products are not sold in their complete original packaging.
18. At the time of the inspection, the "3 Month Frontline Plus / EPA No Box" in various sizes were offered for sale by Respondent.
19. The "3 Month Frontline Plus / EPA No Box" in various sizes are pesticides as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that they are substances or mixtures of substances intended for preventing, destroying, repelling, or mitigating a pest.
20. At the time of the inspection, the "3 Month Frontline Plus / EPA No Box" in various sizes were not registered as pesticides with EPA.
21. 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 by EPA.
22. Respondent violated 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.
23. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), states a pesticide is misbranded when its labeling bears any statement, design, or graphic representation which is false or misleading in any particular.

24. Further, as stated in 40 CFR § 156.10 (a)(5)(v), representations in labeling that constitute misbranding include “any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by an agency of the Federal Government.”
25. “The kits” and the “3 Month Frontline Plus / EPA No Box” were misbranded in that the website labeling contained a graphic representing EPA, which directly or indirectly implies recommendation or endorsement by an agency of the Federal Government.
26. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
27. At the time of the inspections, Respondent produced pesticides in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment.
28. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states it is unlawful to produce a pesticide in any state unless the establishment is registered with the Administrator of EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e.
29. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
30. 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.

31. 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.
32. 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 ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500), 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

33. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
34. 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.
35. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
36. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
37. 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. 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

and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

39. Respondent is assessed a civil penalty of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500), which shall be paid within 30 days from the effective date of this CAFO.
40. 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, MO 63197-9000.

The check shall reference on its face the name of the

Respondent and the Docket Number assigned to this CAFO.

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

42. 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.
43. 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 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 principle amount not paid within 90 days of the due date.
44. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
45. This CAFO shall be binding upon the Respondent, its successors and assigns.
46. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

APPROVED AND SO ORDERED TO:

No More Fleas Please, Inc.
Docket No. FIFRA-04-2010-3033(b)

By: SKL (Signature) Date: 4/16/10

Name: SHAUN E. KOCH (Typed or Printed)

Title: PRESIDENT (Typed or Printed)

U.S. Environmental Protection Agency

By: Carol G. Kemba Date: 4/28/10
Kenneth R. Lapiere, Acting Director
Air, Pesticides and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 4th day of May 2010.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify 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: No More Fleas Please, Inc., Docket Number FIFRA 04-2010-3033(b), to the addressees listed, in the manner indicated:

Mr. Shaun Koch
President
No More Fleas Please, Inc.
4404 Pebble Pond Dr.
Charlotte, NC 27603

(Via Certified Mail, Return Receipt Requested)

Molly Miller
Pesticides Section
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

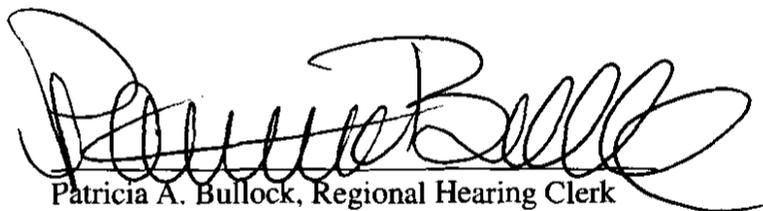
(Via EPA's internal mail)

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

(Via EPA's internal mail)

Date:

5-4-10



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 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 Wilson on 4/30/10
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: No More Fleas Please Inc.
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 1,500
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIERA 04 2010 3033(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program 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) |