



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 08 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Adra Kennard
Owner
Kennard Ace Hardware Corporation
202 Northwest 140th Terrace
Newberry, Florida 32669

Re: Newberry Ace Hardware & Lumber
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2016-3002(b)

Dear Ms. Kennard:

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'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." This document puts you on notice of your 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 Melba Table of the EPA Region 4 staff at (404) 562-9086.

Sincerely,

Anthony G. Toney
Chief

Chemical Safety and Enforcement Branch

Enclosures
cc: FLDACS

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

RECEIVED
FIFRA-04-2016-3002(b)
SEP 14 2016

In the Matter of:)
)
Newberry Ace Hardware & Lumber)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2016-3002(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 Newberry Ace Hardware & Lumber.
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 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 the EPA in this proceeding:

Melba Table
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9086.

5. Respondent is Newberry Ace Hardware & Lumber, a Florida Limited Liability Company, located at 25155 West Newberry Road, Newberry, Florida 32669.
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 March 3, 2015, Respondent, submitted a Pesticide Report for Pesticide-Producing and Device-Producing Establishment ("Report") to EPA Region 4, for the calendar year 2014 .
8. The Report indicated that the Respondent produced and repackaged the registered

pesticide Ultra-Chlor (EPA Registration Number 72122-20002), at its retail store located at 25155 West Newberry Road, Newberry, FL 32669.

9. Ultra-Chlor 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.
10. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(2)(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).
11. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines “producer” and “produce.” “The term ‘producer’ means the person who manufactures, prepares compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.” The term ‘produce’ means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”
12. Section 2(dd) of FIFRA, 7 U.S.C. 136(dd) defines “establishment” as “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.” Respondent refilled Ultra Chlor into containers at its store for sale to customers. Therefore, Respondent’s store is a pesticide producing establishment. Respondent “produced” Ultra Chlor at its establishment .
13. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful to produce a pesticide in any state unless the establishment is registered with the Administrator of the EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e.

14. Respondent produced Ultra-Chlor in an establishment that was not registered with the Administrator of the EPA. Therefore, 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(a) of FIFRA, 7 U.S.C. § 136l(a).
15. 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.
16. 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.
17. 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 SEVEN HUNDRED EIGHTY-FIVE DOLLARS (\$1,785)** against the Respondent for 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

18. 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.
19. 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.
20. 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.
21. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.

22. 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 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.
23. 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

24. Respondent is assessed a civil penalty of **ONE THOUSAND SEVEN HUNDRED EIGHTY-FIVE DOLLARS (\$1,785)** which shall be paid within 30 days from the effective date of this CAFO.
25. 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, Missouri 63197-9000.

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

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

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819.

26. 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, SW
Atlanta, Georgia 30303-8960

Melba Table
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

27. 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.
28. Pursuant to 31 U.S.C. § 3717, 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. 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.

29. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
30. This CAFO shall be binding upon the Respondent, its successors and assigns.
31. 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.


The remainder of this page is intentionally left blank.

VI. Effective Date

32. 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:

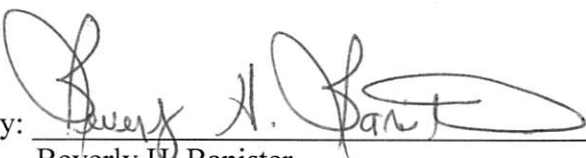
Respondent: Newberry Ace Hardware & Lumber
Docket No.: FIFRA-04-2016-3002(b)

By:  (Signature) Date: 12/30/16

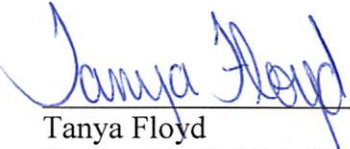
Name: Adra Kennard (Typed or Printed)

Title: President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 5/4/17
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 8th day of June 2016.


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, In the Matter of: Newberry Ace Hardware & Lumber, Docket Number FIFRA-04-2016-3002(b), and served a true and correct copy of the same to the addressees listed below, in the manner indicated:

Ms. Adra Kennard (via Certified Mail, Return Receipt Requested)
Owner
Kennard Ace Hardware Corporation
202 Northwest 140th Terrace
Newberry, Florida 32669

Melba Table (via EPA's internal mail)
Pesticides Section
Air, Pesticides and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)
Office of Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

Date: 6/8/17


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