

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

IN THE MATTER OF:) CIVIL COMPLAINT
) and
E-Z CLEANERS, LLC) NOTICE OF OPPORTUNITY
) FOR HEARING
)
) Docket No. FIFRA-04-2007-3033
Respondent.)
_____)

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I. CIVIL COMPLAINT

A. Jurisdiction

1. This is a civil administrative complaint issued under the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§136 *et seq.* (hereinafter "FIFRA").
2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA" or "Agency") has reason to believe that E-Z Cleaners, LLC, has violated Section 12 of FIFRA, 7 U.S.C. §136j.
3. The Complainant, the Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is authorized by the EPA Administrator and the EPA Regional Administrator for Region 4 to issue a complaint on behalf of the Agency to persons alleged to be in violation of FIFRA.
4. E-Z Cleaners, LLC (hereinafter "Respondent") is a North Carolina Limited Liability Corporation currently located at 698 Bryant Blvd., Rock Hill, South Carolina 29732.

5. Respondent was formerly located at 520-H Clanton Road, Charlotte, North Carolina 28217 and operated a manufacturing facility at 3561 Plateau Road Newton, North Carolina 28658.
6. The 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.
7. The Respondent manufactures the pesticides “E-Z Clean All Purpose Hand Cleaner Antibacterial with Pumice, Blue Gel” and the “E-Z Clean All Purpose Hand Cleaner Antibacterial with Pumice, Blue Crème” at its facilities in Newton, North Carolina and Rock Hill, South Carolina.
8. The Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. §136(w), and 40 C.F.R. §167.3 and 40 C.F.R. §169.1.

B. Statement of Facts and Violations

COUNTS 1-10

9. Complainant incorporates the provisions described in paragraphs 1 through 8 by reference.
10. On or about June 24, 2005, an authorized representative of EPA conducted an inspection at Respondent’s facility located at 520-Clanton Road, Charlotte, North Carolina, 28217.
11. During the June 24, 2005 inspection, the inspector obtained the following products which were packaged, labeled, and ready for shipment: “E-Z Clean All Purpose Hand Cleaner Antibacterial with Pumice, Blue Gel” and “E-Z Clean All Purpose Hand Cleaner Antibacterial with Pumice, Blue Crème” (herein identified as the “Antibacterial Hand Cleaner Products”).

12. The inspector also obtained five Bills of Lading documenting the shipment of these products on June 21, 2005, to Lowe's Pennsylvania RDC #961, Minersville, Pennsylvania 17954; Lowe's Mid-Atlantic RDC #1420, Garysburg, North Carolina 27831; Lowe's NC RDC #960, Olin, North Carolina 28660; Lowe's Texas RDC #955, Mount Vernon, Texas 75457; and Lowe's Plainfield CT RDC #1421, Plainfield, Connecticut 06374.
13. The Antibacterial Hand Cleaner Products are antimicrobial pesticides as defined in Section 2(mm) of FIFRA, 7 U.S.C. §136(mm). An "antimicrobial pesticide" means a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.
14. Respondent "distributes or sells" pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. §136(gg).
15. At the time of the inspection, the Antibacterial Hand Cleaner Products being distributed by Respondent were not registered as pesticides with EPA as required by Section 3(a) of FIFRA, 7 U.S.C. §136a (a).
16. 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.
17. 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 penalties under Section 14 of FIFRA, 7 U.S.C. §136l.

COUNTS 11-20

18. Complainant incorporates the provisions described in paragraphs 1 through 17 by reference.

19. At the time of the inspection, the Antibacterial Hand Cleaner Products being distributed by the Respondent were "misbranded" pesticides under Section 2(q) of FIFRA, 7 U.S.C. §136(q), in that the labeling for these products did not include the EPA establishment number and ingredient statement.
20. It is a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136j (a)(1)(E), for any person to distribute or sell any pesticide which is misbranded.
21. The inspector obtained five Bills of Lading documenting the shipment of these misbranded products on June 21, 2005, to Lowe's Pennsylvania RDC #961, Minersville, Pennsylvania 17954; Lowe's Mid-Atlantic RDC #1420, Garysburg, North Carolina 27831; Lowe's NC RDC #960, Olin, North Carolina 28660; Lowe's Texas RDC #955, Mount Vernon, Texas 75457; and Lowe's Plainfield CT RDC #1421, Plainfield, Connecticut 06374.
22. 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 penalties under Section 14 of FIFRA, 7 U.S.C. §136l.

COUNT 21

23. Complainant incorporates the provisions described in paragraphs 1 through 22 by reference.
24. Establishments that produce pesticides are required to be registered with the Administrator of EPA as set forth in Section 7(a) of FIFRA, 7 U.S.C. §136(e).
25. At the time of the June 24, 2005 inspection, Respondent's representative told the inspector that the Antibacterial Hand Cleaner Products were manufactured at a facility located at 3561 Plateau Road Newton, North Carolina 28658.

26. Respondent's facilities located at 520-Clanton Road, Charlotte, North Carolina, 28217; 3561 Plateau Road Newton, North Carolina 28658; and 698 Bryant Blvd., Rock Hill, South Carolina 29732, have not been registered with EPA as pesticide-producing facilities.
27. It is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §136j (a)(2)(L) for any person to violate Section 7(a) of FIFRA, 7 U.S.C. §136e (a).
28. 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 penalties under Section 14 of FIFRA, 7 U.S.C. §136l.

C. Proposed Penalty

Section 14 of FIFRA, 7 U.S.C. §136l, in conjunction with the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701, and the regulations promulgated at 40 C.F.R. Part 19, authorizes the issuance of this Complaint for the assessment of a civil penalty. EPA proposes to assess a civil penalty against the Respondent of \$74,300.

Appropriateness of Proposed Penalty

The proposed penalty has been derived in accordance with the July 2, 1990, Enforcement Response Policy for FIFRA and in accordance with the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Inflation Adjustment Rule, 61 Fed. Reg. 69,360 (December 31, 1996), which provide for a 10% increase in the statutory maximum for violations of federal statutes after January 31, 1997, and a subsequent increase of 10% for violations occurring after March 15, 2004, 69 Fed. Reg. 7121 (February 13, 2004).

Respondent was placed in Category II (total business revenues between \$300,001 and one million dollars). If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating that another category is appropriate.

As set forth in the policy and Section 14(a)(4) of FIFRA, 7 U.S.C. §1361(a)(4), in determining the amount of the penalty, Complainant must take into consideration the size of Respondent's business, the effect on the Respondent's ability to continue in business, and the gravity of the violation.

Complainant will consider Respondent's financial condition in mitigating the proposed penalty, insofar as is necessary to permit Respondent to continue in business. In order to have its financial condition considered, Respondent must submit certified financial information.

II. NOTICE OF OPPORTUNITY FOR HEARING

A. Answer and Request for Hearing

The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, as amended," 40 C.F.R. Part 22 (Consolidated Rules) govern the procedures of the hearing. A copy of the Consolidated Rules accompanies this Complaint. Under these rules, you have the right to request a formal hearing to contest any material fact set forth in this Complaint and/or to contest the appropriateness of proposed penalty.

You must file a written Answer within 30 days of your receipt of this Complaint (unless a Consent Agreement and Final Order resolving this matter is filed within the 30 days) to avoid being found in default. Default constitutes an admission by you of all facts alleged in the Complaint, waives your right to a hearing, and results in having the above-cited penalty assessed without further proceedings.

Your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which you have knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to admit, deny, or explain any material factual allegation contained in the complaint constitutes an

admission of allegation. Your Answer must also briefly state all facts and circumstances, if any, which constitute grounds for a defense and specifically request an administrative hearing (if desired). If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing. Your written Answer to the Complaint should be sent to:

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

A copy of the Answer should also be sent to:

Elizabeth O'Sullivan
 Associate Regional Counsel
 U.S. EPA, Region 4
 Office of Environmental Accountability
 61 Forsyth Street, SW
 Atlanta, Georgia 30303

Dawn Johnson
 Environmental Protection Specialist
 U.S. EPA, Region 4
 Pesticides & Toxic Substances Branch
 61 Forsyth Street, SW
 Atlanta, Georgia 30303.

B. Informal Settlement Conference

Whether or not you request a hearing, you may confer informally with Ms. Elizabeth O'Sullivan at (404) 562-9696 or Ms. Dawn Johnson at (404) 562-9017 to discuss the facts of this case, the amount of the proposed penalty, or the possibility of a settlement. An informal settlement conference does not, however, affect your obligation to file a written Answer to the Complaint.

EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with you in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by EPA and yourself would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Administrator.

Please be advised that after the Complaint is issued, pursuant to Section 22.8 of the Consolidated Rules, any *ex parte* discussion of the merits of any action with the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, Presiding Officer, or any person likely to advise these officials in the decision of the case is prohibited. *Ex Parte* discussion as used herein means communicating to any of the above officials by one party to a proceeding without notice to and in the absence of the other party.

C. Payment of Penalty

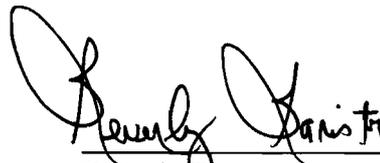
If Respondent chooses not to contest any of the allegations set forth in this Complaint by filing a written Answer, within 30 days of receipt of the Complaint, an authorized official should sign and submit an Affidavit (in lieu of an Answer) that the violations have been corrected and pay the proposed penalty. The Affidavit of Compliance should be sent to the Regional Hearing Clerk, EPA, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303-8960. The check must be payable to the Treasurer, United States of America and sent to the following banking address:

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

The check must include on its face the Docket Number (FIFRA-04-2007-3033) and the Respondent's name as stated on page one of this Complaint.

AUG - 3 2007

Date



Beverly Danister
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Civil Complaint and Notice of Opportunity for Hearing In the Matter of: E-Z Cleaners, LLC, Docket No. FIFRA-04-2007-3033, on the parties listed in the manner indicated.

Dawn Johnson
US EPA, Region 4
Air, Pesticides and Toxics Management Division
61 Forsyth Street, SW
Atlanta, GA 30303

(Via EPA's internal mail)

Elizabeth O'Sullivan
US EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, SW
Atlanta, GA 30303

(Via EPA's internal mail)

Roberta Seeman
E-Z Cleaners
698 Bryant Blvd.
Rock Hill, SC 29732

(Via Certified Mail – Return
receipt requested)

Date: 8/3/07



Saundra J. Wilson/Paralegal Specialist
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303