



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAR 3 0 2009

4APT-PTSB

Certified Mail – Return Receipt Requested

Wayne Albright, President
Germ Pro Products, Inc.
3810 Gunn Highway
Tampa, Florida 33618

SUBJ: Docket No. FIFRA-04-2009-3032(b)
Germ Pro Products, Inc.

Dear Mr. Albright:

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 IV of the CAFO, the assessed penalty of \$400 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.

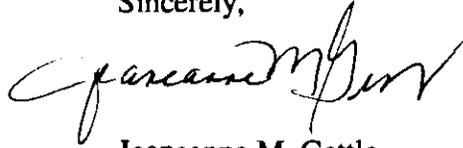
Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Cheryn Jones at (404) 562-9006.

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

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

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 (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle". The signature is fluid and cursive, with a large initial "J" and "G".

**Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch**

Enclosures

**cc: Mr. Craig Bryant
Florida Department of Agriculture
and Consumer Services**

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2009 MAR 30 PM 2:53
HEARING CLEAN

In the Matter of:)
)
Germ Pro Products, Inc.) Docket No. FIFRA-04-2009-3032-03
)
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. § 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 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 Germ Pro Products, 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.

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:

Cheryn L. Jones
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9006.
5. Respondent is Germ Pro Products, a Florida corporation, located at 3810 Gunn Highway, Tampa, Florida 33618.
6. Respondent's website address is www.germproproducts.com/.
7. 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.
8. Respondent is a supplemental distributor of the antimicrobial pesticide, "Novi Guard Quick Dry," assigned EPA Registration No. 69658-3, which Respondent sells and distributes under the name of "Germ Pro Surface Disinfectant," EPA Registration No. 65658-3-83831.
9. "Germ Pro Surface Disinfectant" is produced by Pro PackContract Packaging, Inc., located in High Ridge, Missouri, and assigned EPA Establishment No. 082628-MO-1.

II. Specific Allegations

10. On or about January 14, 2009, an authorized representative of the EPA inspected Respondent's website located at www.germproproducts.com/.
11. During the aforementioned website inspection, the product "Germ Pro Surface Disinfectant," was advertised by Germ Pro Products, Inc.
12. "Germ Pro Surface Disinfectant" is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that it is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating a pest.
13. 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).
14. Further, "Germ Pro Surface Disinfectant " is an antimicrobial pesticide as defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), in that the product is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.
15. Respondent "distributes or sells" pesticides. The term "to distribute to 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.

16. 40 C.F.R. § 168.22 states EPA's interpretation of "offer for sale" extends to advertisements in any advertising medium to which pesticide users of the general public have access.
17. "Germ Pro Surface Disinfectant" is advertised on the web site as effective against a variety of virus, fungi, bacteria and yeast microbes, including *Methicillan Resistant Staph Aureus*, and *Clostridium difficile* and its spores.
18. "Novi Guard Quick Dry," as registered with EPA, does not include claims for being efficacious against *Methicillan Resistant Staph Aureus*, and *Clostridium difficile* and its spores.
19. According to Section 12(a)(1)(B), 7 U.S.C. § 136j(a)(1)(B), it is unlawful for any person to sell or distribute any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.
20. On or about January 27, 2009, Complainant issued a Stop Sale, Use or Removal Order (SSURO), FIFRA Docket No. 04-2009-3291, to Respondent to prevent further sale or distribution of "Germ Pro Surface Disinfectant" with the unlawful claims set forth in paragraph 17.
21. On or about February 6, 2009, the aforementioned SSURO was withdrawn after Respondent amended its website and all other advertising media to remove all claims for "Germ Pro Surface Disinfectant" that substantially differ from claims made in connection with the registration of "Novi Guard Quick Dry."

22. At the time of Respondent's website inspection, the distributor product, "Germ Pro Surface Disinfectant" was advertised and offered for sale with claims made for it that substantially differed from the claims made for the registered product, "Novi Guard Quick Dry."
23. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
24. 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.
25. 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. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA proposes to assess a total civil penalty of FOUR HUNDRED DOLLARS (\$400) 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.

III. Consent Agreement

26. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
27. 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.

28. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
29. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
30. 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 action for imminent and substantial endangerment, or to pursue criminal enforcement.
31. 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.

IV. Final Order

32. Respondent is assessed a civil penalty of FOUR HUNDRED DOLLARS (\$400) which shall be paid within 30 days from the effective date of this CAFO.
33. 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 of assigned to this CAFO.**

34. 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, S.W.
Atlanta, Georgia 30303-8960;

Cheryn L. Jones
Pesticides Management 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.

35. 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.
36. 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

matter.

39. This CAFO shall be binding upon the Respondent, its successors and assigns.
40. 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.

Remainder of page intentionally left blank.

V. Effective Date

41. 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:

Germ Pro Products, Inc.
Docket No. FIFRA-04-2009-3033(b)

By: Wayne C. Albright (Signature)
Name: Wayne C. Albright (Typed or Printed)
Title: President (Typed or Printed)

Date: 3/8/09

U.S. Environmental Protection Agency

By: Carol L. Kemker

Date: 3/26/09

Carol L. Kemker
Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 30th day of March 2009.

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 Germ Pro Products, Inc., Docket Number: FIFRA-04-2009-3032(b), to the addressees listed below.

Wayne Albright, President (via Certified Mail, Return Receipt Requested)
Germ Products, Inc.
3810 Gunn Highway
Tampa, Florida 33618

Cheryn Jones (via EPA's internal mail)
Pesticides Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Robert Caplan (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Date: 3-30-09


Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
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 3/27/09
(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: Berm Pro Products Inc.
(Name of person and/or Company/Municipality making the payment)

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

The Case Docket Number: FIFRA 04 2009 3032(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) |