

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

IN THE MATTER OF:

American Consumer Products

Respondent.

)
)
) CIVIL COMPLAINT
) and
) NOTICE OF OPPORTUNITY
) FOR HEARING

)
) Docket No. FIFRA-04-2009-3023
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I. CIVIL COMPLAINT

A. Jurisdiction

1. This is a civil administrative complaint issued under the authority of Section 12 of the Federal, Insecticide, Fungicide and Rodenticide Act, (hereinafter "FIFRA").
2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.
3. The Georgia Secretary of State and the Illinois Secretary of State corporation database dated January 28, 2009, indicates that the Respondent, American Consumer Products, operates as a Georgia Corporation, located at 1 American Consumer Way, Columbus, GA 31907 and as an Illinois Corporation, located at American Consumer Products of Illinois, 1301 West 22nd Street, Oakbrook, IL 60523.

4. The Complainant, the Director of the Air, Pesticides and Toxics Management Division, Environmental Protection Agency Region 4, is authorized by the EPA Administrator and the EPA Region 4 Regional Administrator for to issue a complaint on behalf of the Agency to persons alleged to be in violation of Section 12 of FIFRA, 7 U.S.C. § 136j.

B. Statement of Facts

5. Respondent is both a Georgia and Illinois Corporation, as indicated by the Georgia Secretary of State and the Illinois Secretary of State, doing business at all relevant times in Georgia.

6. On or about October 3, 2007, an inspector with the North Carolina Department of Agriculture and Consumer Services, NCDACS, duly authorized by EPA, conducted an inspection at Maxway # 1482 located at 2400 Memorial Drive, Greenville, NC 27834.

7. At the time of the inspection, the inspector observed six 32.5 fluid ounce containers of "Anti-Bacterial Formula 24-7 All Purpose Lemon Scent Cleaner," being displayed for sale on shelves located at Maxway #1482.

8. The inspector obtained evidence consisting of photographs documenting six containers and shipping records documenting 12 units were shipped to Maxway # 1482 by Variety Wholesalers, Inc., located at 218 Garnett St., Henderson, NC 27536.

9. On or about November 11, 2007, NCDACS, duly authorized by EPA, conducted an inspection at Variety Wholesalers, Inc.

10. At the time of the inspection, the inspector obtained evidence consisting of shipping records documenting 4 pallets of "Anti-Bacterial Formula 24-7 All Purpose Lemon Scent Cleaner," shipped for Variety Wholesalers, Inc., by the Respondent on at least one occasion.

11. At the time of both inspections, Respondent produced "Anti-Bacterial Formula 24-7 All Purpose Lemon Scent Cleaner."
 12. At the time of the inspection, Respondent distributed "Anti-Bacterial Formula 24-7 All Purpose Cleaner."
 13. 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.
 14. At the time of the inspection, Respondent was 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.
 15. At the time of the inspections, Respondent was "distributing or selling unregistered pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
- C. Alleged Violations

COUNT 1

16. Complainant incorporates the provisions described in paragraphs 1 through 14 by reference.
 17. According to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful to to distribute or offer for sale any pesticide that is not registered under Section 3 of FIFRA, unless otherwise authorized by EPA.
 18. Respondent distributed, sold and offered for sale the "Anti-Bacterial Formula 24-7 All Purpose Lemon Scent Cleaner." Therefore, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing, selling and offering for sale an unregistered pesticide on at least one occasion.
- D. Proposed Penalty

19. 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 for the violations as set forth in forth in Count 1 in the amount of \$6,500, for a total proposed civil penalty of \$6,500.

E. Appropriateness of Proposed Penalty

20. The proposed penalty has been derived in accordance with the July 2, 1990, Enforcement Response Policy (ERP) for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) for the violations cited for a Category I Respondent 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 and before January 12, 2009).

21. Respondent was placed in "Category I" (total business revenue over \$1,000,000 per year) pursuant to the Penalty Policy. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating that another category is appropriate.

22. 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, to include but may not be limited to, the last three years of corporate tax returns.

II. NOTICE OF OPPORTUNITY FOR HEARING

A. Answer and Request for Hearing

23. 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.
24. 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.
25. 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.

26. Your written Answer to the Complaint should be sent to:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
Telephone: (404) 562-9511.

A copy of the Answer should also be sent to:

Jennifer M. Lewis
Attorney
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Melba Table
Case Development Officer
U.S. EPA, Region 4
Pesticides & Toxic Substances Branch
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960.

B. Informal Settlement Conference

27. Whether or not you request a hearing, you may confer informally with Jennifer Lewis at (404) 562-9518 or Melba Table at (404) 562-9086 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.
28. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with you in an informal settlement conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order (CAFO). A CAFO signed by EPA and the Respondent would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Administrator.
29. 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.

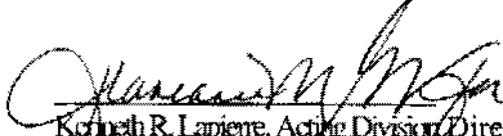
C. Payment of Penalty

30. 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 of Compliance (in lieu of an Answer) that the violations have been corrected and pay the proposed penalty via cashier's or certified check. 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
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

The check shall reference on its face the Docket Number (FIFRA-04-2009-3023).

8/21/09
Date


Kenneth R. Lapierre, Acting Division Director
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

CERTIFICATE OF SERVICE

I hereby certify that I have this day served to the Region 4, Regional Hearing Clerk the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing, In the Matter of: American Consumer Products, FIFRA-04-2009-3023. I also certify that I have served a true and correct copy of same on the parties listed below in the manner indicated.

Melba Table
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Jennifer Lewis
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Mr. Zahran Robins
American Consumer Products
1301 West 22nd St.
Oakbrook, IL 60523.

(Via Certified Mail, Return Receipt
Requested)

Date: 8/25/09


Saundi J. Wilson, Paralegal Specialist
Office of Air, Toxics, and General Law, OEA
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303