

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

2010 MAR 26 PM 3:37

HEARING CLERK

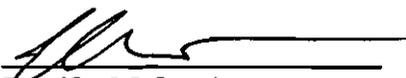
IN THE MATTER OF:	)	
	)	
American Consumer Products Corporation	)	
	)	Docket No. FIFRA-04-2009-3023
Respondent.	)	
_____	)	

**MOTION TO AMEND THE COMPLAINT**

COMES NOW the Complainant, the United States Environmental Protection Agency (EPA) Region 4, by and through its counsel pursuant to Rule 22.16(a) of the Consolidated Rules of Practice (40 C.F.R. § 22.16(a)) and the Prehearing Order issued in this matter by Chief Administrative Law Judge Susan L. Biro and respectfully requests leave to amend the Complaint filed in this matter and as grounds therefore states as follows:

Section 2(A) and (G) of the Prehearing Order require that a motion to amend the Complaint be filed if appropriate to clarify and correct certain factual errors in the Complaint. Complainant has drafted an Amended Complaint to correct the name of the Respondent in the Complaint pursuant to Section 2(A) of the Prehearing Order and to specify which inspection(s) and product Paragraph 12 of the Complaint refers to pursuant to Section 2(G) of the Prehearing Order.

An Amended Complaint is attached to this Motion.

  
 \_\_\_\_\_  
 Jennifer M. Lewis  
 Counsel for Complainant

March 26, 2010  
 Date

**CERTIFICATE OF SERVICE**

I certify that the foregoing Motion to Amend the Complaint, dated, March 26, 2010, was sent this day in the following manner to the addressees listed below:

Original by Interoffice Mail to:

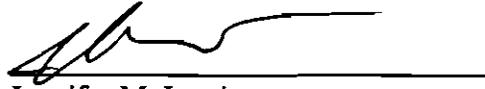
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth St., SW  
Atlanta, Georgia 30303

Copy by Certified Mail, e-mail and facsimile to:

Robin Zahran  
American Consumer Products  
1301 W. 22<sup>nd</sup> Street, Suite 815  
Oakbrook, IL 60523  
Fax No. (706) 562-2222

Copy by Pouch Mail, e-mail and facsimile to:

The Honorable Susan L. Biro  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Ave., N.W.  
Mail Code 1900L  
Washington, DC 20005  
Fax No. (202) 565-0044



Jennifer M. Lewis  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Dated: 3-26-2010

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
 )  
 ) AMENDED CIVIL COMPLAINT  
 ) and  
American Consumer Products Corporation ) NOTICE OF OPPORTUNITY  
 ) FOR HEARING  
 )  
 ) Docket No. FIFRA-04-2009-3023  
 )  
Respondent. )  
\_\_\_\_\_ )

I. AMENDED CIVIL COMPLAINT

A. Jurisdiction

1. This is an amended civil administrative complaint issued under the authority of Section 12 of the Federal, Insecticide, Fungicide and Rodenticide Act, (hereinafter "FIFRA").
2. 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 Section 12 of FIFRA, 7 U.S.C. § 136j.
3. The Georgia Secretary of State corporation database as of March 15, 2010, indicates that the Respondent, American Consumer Products Corporation, operates as a Georgia Corporation, located at 3 Mutec Drive, Columbus, GA 31907.
4. 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.

**B. Statement of Facts**

5. At all relevant times, Respondent was a Georgia Corporation, doing business in Georgia.
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.
7. 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.
8. At the time of the October 3, 2007 inspection, the inspector observed six (6) 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. The inspector obtained photographs documenting the six (6) containers.
9. The inspector also obtained shipping records documenting that twelve (12) units of “Anti-Bacterial Formula 24-7 All Purpose Lemon Scent Cleaner” were shipped to Maxway # 1482 by Variety Wholesalers, Inc., located at 218 Garnett St., Henderson, NC 27536.
10. On or about November 11, 2007, NCDACS, duly authorized by EPA, conducted an inspection at Variety Wholesalers, Inc.
11. At the time of the November 11, 2007 inspection, the inspector obtained evidence consisting of shipping records documenting four (4) pallets of “Anti-Bacterial Formula 24-7 All Purpose Lemon Scent Cleaner,” shipped to Variety Wholesalers, Inc., by the Respondent on at least one occasion.

12. At the time of the October 3, 2007 and November 11, 2007 inspections, Respondent was a "producer" of "Anti-Bacterial Formula 24-7 All Purpose Lemon Scent Cleaner" 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
  13. At the time of the October 3, 2007 and November 11, 2007 inspections, Respondent was "distributing or selling" "Anti-Bacterial Formula 24-7 All Purpose Lemon Scent Cleaner" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
- C. Alleged Violation
14. Complainant incorporates the provisions described in paragraphs 1 through 13 by reference.
  15. "Anti-Bacterial Formula 24-7 All Purpose Lemon Scent Cleaner" purports to be 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.
  16. 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).
  17. "Anti-Bacterial Formula 24-7 All Purpose Lemon Scent Cleaner" is not a registered pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

18. According to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful to distribute or offer for sale any pesticide that is not registered under Section 3 of FIFRA, unless otherwise authorized by EPA.
19. Respondent distributed, sold and offered for sale "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 (1) occasion.

D. Proposed Penalty

20. 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 authorize the issuance of this Amended 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 the amount of \$6,500.

E. Appropriateness of Proposed Penalty

21. 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).

22. 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
23. 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

24. 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 Amended Complaint. Under these rules, you have the right to request a formal hearing to contest any material fact set forth in this Amended Complaint and/or to contest the appropriateness of proposed penalty.
25. You must file a written Answer within 20 days of your receipt of this Amended Complaint (unless a Consent Agreement and Final Order resolving this matter is filed within the 20 days) to avoid being found in default. Default constitutes an admission by you of all facts alleged in the Amended Complaint, waives your right to a hearing, and results in having the above-cited penalty assessed without further proceedings.

26. Your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Amended 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.

27. Your written Answer to the Amended 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:

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

28. Whether or not you request a hearing, you may confer informally with Jennifer M. 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 Amended Complaint.

29. 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.
30. Please be advised that after the Amended 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

31. If Respondent chooses not to contest any of the allegations set forth in this Amended Complaint by filing a written Answer within 20 days of receipt of the Amended 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-

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).**

3/26/2010

Date



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