



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 01 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Tim Moore
Attorney at Law
Tim Moore Law Offices
305 East King Street
Kings Mountain, North Carolina 28086

Re: Grant Exterminating Company, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2017-3009(b)

Dear Mr. Moore:

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 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. 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 Phillip Beard of the EPA Region 4 staff at (404) 562-9012.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Toney", with a long horizontal flourish extending to the right.

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosures

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

In the Matter of:)	
)	
Grant Exterminating Company, Inc.)	Docket No.: FIFRA-04-2017-3009(b)
)	
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, 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 Grant Exterminating Company, Inc.
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, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9086.

5. Respondent is Grant Exterminating Company, Inc., a North Carolina corporation, located at 1321 West Franklin Blvd, Gastonia, North Carolina 28052.
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 December 18, 2013, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 1321 West Franklin Blvd, Gastonia, NC 28052.
8. During the inspection, the inspector observed that Respondent had repackaged the registered pesticide product, "Cyhalocap CS," EPA Registration Number 499-535, into gallon containers and had relabeled the containers with Respondent's "Insect Spray" labels. The label affixed to the "Insect Spray" product was essentially identical to the EPA- approved label for "Cyhalocap CS."

9. At the time of the inspection, the inspector observed “Insect Spray” being offered for sale, and also collected invoices showing that Respondent had sold “Insect Spray” as an imitation of “Cyhalocap CS,” an EPA-registered pesticide, EPA Registration Number 499-535.
10. At the time of the inspection, Respondent did not have a supplemental distribution agreement with the registrant that produces and markets the registered pesticide “Cyhalocap CS.” Because the Respondent was not in compliance with the requirements for supplemental distribution of a registered pesticide product set forth in 40 C.F.R. § 152.132, “Insect Spray” was not a “distributor product.” As such, “Insect Spray” was considered to be an unregistered pesticide.
11. The term “Pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
12. 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 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).
13. Respondent “distributes or sells” pesticides. The term “to distribute or 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.
14. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under

Section 3 of the Act or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator of EPA.

15. The EPA alleges that by selling and distributing the unregistered pesticide “Insect Spray” without having a supplemental distribution agreement with the registrant of “Cyhalocap CS,” Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least one occasion and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
16. Pursuant to Section 2(q)(1)(C) of FIFRA, 7 U.S.C. 136(2)(q)(1)(C), a pesticide is misbranded if it is an imitation of, or is offered for sale under the name of another pesticide.
17. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide that is misbranded.
18. The EPA further alleges that by selling and distributing “Insect Spray” as an imitation of a registered pesticide, Respondent sold and distributed a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least one occasion and is, therefore, subject to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
19. Pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, no person shall produce any pesticide or active ingredient used in producing a pesticide in any State unless the establishment in which it is produced is registered with the EPA. Section 2(w) of FIFRA, 7 U.S.C §136(w), defines “producer” and “produce.” As follows: “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.”

20. Respondent produced the pesticide "Insect Spray" in an establishment that was not registered with the Administrator, in violation of Section 7 of FIFRA. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136l(a)(2)(L), it shall be unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA. The EPA alleges that Respondent violated Section 7 of FIFRA, and Section 12(a)(2)(L) of FIFRA, and is, therefore, subject to the assessment of civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
21. Section 14(a) of FIFRA, 7 U.S.C. §136l(a), in conjunction with the 40 C.F.R. Part 19, authorizes the assessment of a civil penalty.
22. 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.
23. 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 **EIGHT THOUSAND FOUR HUNDRED SIXTY DOLLARS (\$8,460)** 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

24. 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.
25. 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.
26. 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.

27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
28. 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.
29. 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

30. Respondent is assessed a civil penalty of **EIGHT THOUSAND FOUR HUNDRED SIXTY DOLLARS (\$8,460)** which shall be paid within 30 days from the effective date of this CAFO.
31. 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.

32. 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; and

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

33. 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.
34. 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.
35. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

36. This CAFO shall be binding upon the Respondent, its successors and assigns.
37. 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.

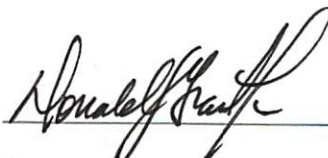
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VI. Effective Date

38. 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: Grant Exterminating Company, Inc.
Docket No.: FIFRA-04-2017-3009(b)

By:  (Signature) Date: 6-28-17

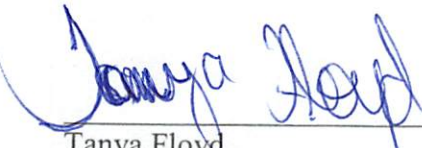
Name: DONALD GRANT (Typed or Printed)

Title: PRESIDENT (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 7/21/2017
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 31st day of July 2017.


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 and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Grant Exterminating Company, Inc., Docket Number: FIFRA-04-2017-3009(b), to the addressees listed below:

Mr. Tim Moore
Attorney At Law
Tim Moore Law Offices
305 East King Street
Kings Mountain, North Carolina 28086

(via Certified Mail, Return Receipt Requested)


Mr. Phillip Beard
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

Mr. Robert Caplan
Senior Attorney
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

8-1-17
Date


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