



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

4APT-PTSB

JAN 07 2008

Federal Express – Overnight Delivery

Mr. James Pinkerton
President
Waterman, Inc.
4928 Day Lily Way NW
Acworth, GA 30102

SUBJ: Docket No. FIFRA-04-2008-3004(b)
Waterman, Inc.

Dear Mr. Pinkerton:

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 CFR Part 22.

Please make note of the provisions in Section IV of the Final Order, with respect to payment of the assessed penalty of \$7,221, which is due within 30 days from the effective date of the CAFO. As required by Paragraph 30 of this CAFO, 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 FIFRA-04-2008-3004(b).

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 the U.S. EPA, Cincinnati Accounting Operations address identified in Paragraph 30 of the CAFO. Should you have any questions about your compliance status in the future, please call me or Ms. Melba Table at (404) 562-9086.

Sincerely,

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Tommy Gray, GDA

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

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Waterman, Inc.)
)
)
Respondent.)
_____)

Docket No. **FIFRA-04-2008-3004(b)**

RECEIVED
EPA REGION IV
2008 JAN -7 AM 11:19
HEARING CLERK

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) (hereinafter "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 Waterman, 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.

II. Preliminary Statements

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:

Melba Table
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9086

5. Respondent is Waterman, Inc. located at 4928 Day Lily Way NW, Acworth, GA 30102.
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 January 8, 2007, an authorized representative of the EPA conducted an inspection at Waterman, Inc., EPA Establishment Number 64646-GA-001, located at 815-D Old Alabama Rd, Mableton, GA 30126.
8. During the aforementioned inspection, the products, "Algaecide-TC, AW Bactericide, and Microtrol," were identified as being produced and distributed by the Respondent.
9. The inspector documented the products Algaecide-TC, AW Bactericide, and Microtrol as having been "packaged and released for shipment."
10. Algaecide-TC, AW Bactericide, and Microtrol, are pesticides 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.

11. 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).
12. 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.
13. At the time of the inspection, the label on the pesticide Algaecide-TC failed to bear the statements: “Have the product container label when calling a poison center or doctor for treatment” and “Directions for Use.”
14. At the time of the inspection, the label on the pesticide AW Bactericide failed to bear the statement: “Have the product container label with you when calling a poison center or doctor for treatment.”
15. According to FIFRA 2(q)(1)(E), a pesticide is misbranded in that any words, statements, or other information required by the Act were not prominently placed on the label in such a way as to make readable or understandable.
16. At the time of the inspection, the label on the Microtrol failed the signal word “Warning” under the precautionary statement of the label.

17. According to FIFRA 2(q)(1)(G), a pesticide is misbranded in that the label did not contain a warning or caution statement adequate to protect health and the environment.
18. It is a violation according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for any person in any State to distribute or sell to any person any pesticide which is misbranded.
19. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least three occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
20. 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.
21. 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.
22. 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 SEVEN THOUSAND TWO HUNDRED TWENTY ONE DOLLARS (\$7,221) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

III. Consent Agreement

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

24. 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.
25. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
26. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
27. 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.
28. 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

29. **Respondent is assessed a civil penalty of SEVEN THOUSAND TWO HUNDRED TWENTY ONE DOLLARS (\$7,221) which shall be paid within 30 days from the effective date of this CAFO.**

30. 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:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

The check shall reference the name and the Docket Number of the CAFO
["Waterman, Inc., FIFRA-04-2008-3004(b)"].

31. 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;

Melba Table
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.

32. 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.
33. 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 direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.
34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. This CAFO shall be binding upon the Respondent, its successors and assigns.
36. 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.

V. Effective Date

37. 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:

Waterman, Inc.

By: James E. Pinkerton (Signature)
Name: JAMES E. Pinkerton (Typed or Printed)
Title: President (Typed or Printed)

Date: 01 Nov 07

U.S. Environmental Protection Agency

By: Kenneth Mitchell for
Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

Date: ~~12/4/07~~ 12/4/07

APPROVED AND SO ORDERED this 28th day of December, 2008.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Waterman, Inc., FIFRA Docket No. 04-2008-3004(b), on the parties listed below in the manner indicated.

For Complainant:

Melba Table

(Via EPA's internal mail)

U.S. EPA - Region 4, 4APT-PTSB

Pesticides Management Section

61 Forsyth Street

Atlanta, GA 30303-8960

Bob Caplan

(Via EPA's internal mail)

Office of Environmental Accountability

U.S. EPA - Region 4

61 Forsyth Street

Atlanta, GA 30303-8960

For Respondent:

James Pinkerton

(Via Certified Mail - Return Receipt Requested)

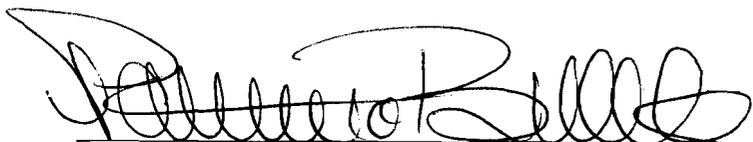
Waterman, Inc.

4928 Day Lily Way NW

Acworth, GA 30102

Date:

1-7-08



Regional Hearing Clerk

United States Environmental

Protection Agency, Region 4

Sam Nunn Atlanta Federal Center

61 Forsyth Street

Atlanta, GA 30303-8960

(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: Saundee Wilson on 12/26/07
(Name) (Date)

in the EAD/OATGL/OLS at 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 |
| <input type="checkbox"/> This is an original debt. | <input type="checkbox"/> This a modification. |
| <input type="checkbox"/> | <input type="checkbox"/> Other Receivable |

PAYEE: Waterman Inc
(Name of person and/or Company/Municipality making the payment)

For Oversight Billing, the anniversary date, or the date specified in the order, or the date as directed by the program office to initiate billing: _____
(Date)

The Total Dollar Amount of the Receivable: \$ 7,221
(If installments, attach schedule of amounts and respective due dates. See other side of this form.)

The Case Docket Number: FIERA 04-2008-3004 (6)

The Site Specific Superfund Account Number: _____

The Designated Regional /Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: Patty Whitney of the Financial Management Section at (404) 562-8238.
Russandra (Rusty) Brown (404) 562-8267

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, DC 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 sent to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |