



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

SEP 25 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Scott Young  
Polsinelli Shughart, PC  
6201 College Boulevard, Suite 500  
Overland Park, Kansas 66211

Re: Automated Packaging, LLC  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2012-3019(b)

Dear Mr. Young:

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 your client on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the EPA. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your client's compliance status in the future, please contact Melba Table of the EPA Region 4 staff at (404) 562-9086.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle".

Jeaneanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

cc: Tommy Gray, GDA



the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between 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  
Atlanta, Georgia 30303-8960  
(404) 562-9086.

5. Respondent is Automated Packaging, LLC, a Delaware limited liability corporation, located at 115 Manufacturers Court, Winder, Georgia, 30680.
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 March 14, 2011, an authorized representative of the EPA conducted an inspection at the Respondent's facility located at 115 Manufacturers Court, Winder, Georgia, 30680.

8. During the inspection, a product labeled “Bite Free Citronella Lotion” was observed at the facility.
9. The portion of the label on the Bite Free Citronella listed the following ingredients for the product: purified water, mineral oil, citronella oil, cetyl alcohol, petrolatum, dimethylcone, glycol stearate, triethanolamine, carbomer, methyl paraben and propyl paraben.
10. Pursuant to 40 C.F.R. § 152.25(f), products containing certain listed active ingredients are exempt from the requirements of FIFRA. To qualify for the exemption, the product must bear a label identifying the name and percentage by weight of each active ingredient and name of each inert ingredient in the product. The label for Bite Free Citronella Lotion did not clarify the active and inert ingredients and did not list the active ingredient by percentage weight as required by 40 C.F.R. § 152.25(f). As such, the product did not meet the requirements specified for a minimal risk pesticide and therefore was not exempt from compliance with FIFRA.
11. The term “pesticide” is defined in Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), to mean, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
12. Bite Free Citronella Lotion is a pesticide as that term is defined in Section 2(u)(1) of FIFRA, and as provided in paragraph 10, it is not exempt for the requirements of FIFRA.
13. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), prohibits the distribution or sale of any pesticide that is not registered under FIFRA.
14. The term “to distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to mean, “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for

shipment, ship, deliver for shipment, or release for shipment or receive and (having so received) deliver or offer to deliver.”

15. During the inspection, a representative of Respondent provided the inspector with eight invoices indicating that Respondent had shipped more than 5,500 cases containing four ounce bottles of Bite Free Citronella Lotion.
16. Therefore, Bite Free Citronella Lotion was distributed or sold by Respondent, as those terms are defined in Section 2(gg) of FIFRA, on at least eight different occasions.
17. The Bite Free Citronella Lotion distributed or sold by Respondent was not registered under Section 3 of FIFRA.
18. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide that is not registered under FIFRA.
19. Therefore, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least eight different occasions and is therefore subject to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
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 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.
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 **TWENTY SEVEN THOUSAND THREE HUNDRED SIXTY DOLLARS (\$27,360)** 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**

23. 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.
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, to the best of its knowledge and belief, 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.

**V. Final Order**

29. Respondent is assessed a civil penalty of **TWENTY SEVEN THOUSAND THREE HUNDRED SIXTY DOLLARS (\$27,360)** 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:

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.**

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  
Atlanta, Georgia 30303-8960;

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

Saundi J. 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, 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.
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. 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.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**VI. 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:**

**Respondent:** Automated Packaging, LLC  
**Docket No.:** FIFRA-04-2012-3019(b)

By: Brian McDerney (Signature) Date: 9/4/2012  
Name: BRIAN McDERNEY (Typed or Printed)  
Title: Vice President + CFO (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By: Beverly H. Banister (Signature) Date: 9-13-12  
Beverly H. Banister, Director  
Air, Pesticides and Toxics Management Division

**APPROVED AND SO ORDERED** this 21 day of Sept 2012.

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 Automated Packaging, LLC, Docket Number: FIFRA-04-2012-3019(b), to the addressees listed below.

Mr. Scott Young  
Polsinelli Shughart, PC  
General Counsel  
6201 College Boulevard, Suite 500  
Overland Park, Kansas 66211

(via Certified Mail, Return Receipt Requested)

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

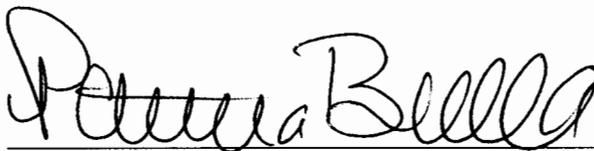
(via EPA's internal mail)

Robert Caplan  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

(via EPA's internal mail)

Date: \_\_\_\_\_

9-25-12



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