



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

JUL 19 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jeffrey Garratt
Garratt Callahan Company
50 Ingold Road
Burlingame, California 94010

Re: Garratt Callahan Company
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2016-3006(b)

Dear Mr. Garratt:

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 Kimberly Tomczak of the EPA Region 4 staff at (404) 562-8987.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosures

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

HEARING CLERK

2016 JUL 19 AM 8:18

OFFICE OF THE HEARING CLERK
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
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Garratt Callahan Company)
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Respondent.)
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Docket No.: FIFRA-04-2016-3006(b)

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 (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency (EPA), Region 4. Respondent is Garratt Callahan Company.
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 of the 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 Respondent.

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:

Kimberly Tomczak
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960
(404) 562-8987

5. Respondent Garratt Callahan Company is licensed to do business in the State of California and has its principal place of business located at 50 Ingold Road, Burlingame, California 94010. In addition, Garratt Callahan Company is licensed to do business in the State of Georgia, and has its place of business located at 4545 Commerce Circle S.W. Atlanta, Georgia 30336.
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 October 31, 2007, the Respondent entered into a supplemental distribution agreement with Akzo Nobel Surface Chemistry LLC for the product Formula 37 (EPA Registration Number 34688-76-8540) and on April 19, 2010, the Respondent entered into a supplemental distribution agreement with BWA Water Additives for the product Formula 325 (EPA Reg. No. 83451-98540). The agreements allow the Respondent to distribute or sell these two pesticide products as a supplemental distributor for Akzo Nobel and BWA Water Additives.
8. On July 9, 2015, an authorized representative of the EPA conducted a producer establishment inspection at the Garratt Callahan Company facility located at 4545 Commerce Circle S.W. Atlanta, Georgia 30336, to determine Respondent's compliance with FIFRA.
9. At the time of the inspection, the inspector observed bin labels (stock supply of labels that have not been affixed to the product containers) of the pesticide products Formula 37 (EPA Registration Number [Reg. No.] 31910-2) and Formula 325 (EPA Reg. No. 83451-9) being offered for sale and/or distribution at the facility. The bin labels did not match the current EPA-approved labels for the two registered EPA products known as Formula 37 and Formula 325.
10. The bin label for Formula 325, did not contain the complete EPA-approved registered master label "Directions for Use" instructions. More specifically, it did not have the statement "including clarifiers used to supply make-up water to these systems."
11. The bin label collected during the inspection for Formula 37 did not include Formula 37's current EPA Registration Number (EPA Registration Number 34688-76-8540) but still contained the old EPA Registration Number 31910-2-8540.

12. The term “pesticide” as defined by Section 2(u) of FIFRA, 7 U.S.C § 136(u), means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
13. 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).
14. 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.
15. During the inspection, the inspector collected shipping invoices documenting at least ten (10) separate occasions during which the Respondent produced, sold and distributed the products Formula 37 and Formula 325 that included bin labels with the incorrect information as described in paragraphs 10 and 11 above.
16. The term “misbranded” as defined by Section 2(q) of FIFRA, 7 U.S.C. § 136 (q), includes labeling [which] bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
17. Based on the evidence collected during its inspection, the EPA alleges that Respondent has sold and/or distributed two misbranded pesticides including Formula 37 and Formula 325 as described above.
18. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or offer for sale a misbranded pesticide.

19. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling and/or distributing misbranded pesticides on at least ten (10) 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 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(s).
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 FIVE THOUSAND FIVE HUNDRED AND SIXTY DOLLARS (\$25,560)** 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.

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. 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.

26. 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

27. Respondent is assessed a civil penalty of **TWENTY FIVE THOUSAND FIVE HUNDRED AND SIXTY DOLLARS (\$25,560)** Payment shall be paid within thirty (30) days of the effective date of this CAFO.
28. Respondent shall remit payment of the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check. **The check shall reference on its face the name of the Respondent and Docket number of this CAFO.**

Payment of the penalty shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Address for payment by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819.

29. 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;

Kimberly Tomczak
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
Office of Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960.

30. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, the EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). 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.
31. 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.

32. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
33. This CAFO shall be binding upon the Respondent, its successors and assigns.
34. 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

35. 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: Garratt Callahan Company

Docket No.: FIFRA-04-2016-3006(b)


By:  (Signature)

Date: 06-23-16

Name: JEFFREY L. GARRATT (Typed or Printed)

Title: PRESIDENT (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By: 
Carol L. Kenker
Acting Director
Air, Pesticides and Toxics Management Division

Date: 7/5/16

APPROVED AND SO ORDERED this 18th day of July 2016.



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 Garratt Callahan Company, Docket Number: FIFRA-04-2016-3006(b), to the addressees listed below:

Mr. Jeffrey Garratt
Garratt Callahan Company
50 Ingold Road
Burlingame, California 94010

(via Certified Mail, Return Receipt Requested)

Kimberly Tomczak
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal mail)

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

(via EPA's internal mail)

Date: 7-19-16



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