



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

FEB 18 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Matthew K. Rogers
Attorney at Law
Law Offices of Matthew K. Rogers PLLC
200 1st Avenue, NW, Suite 104
Hickory, North Carolina 28603

Re: MTJ American, LLC
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2014-3009

Dear Mr. Rogers:

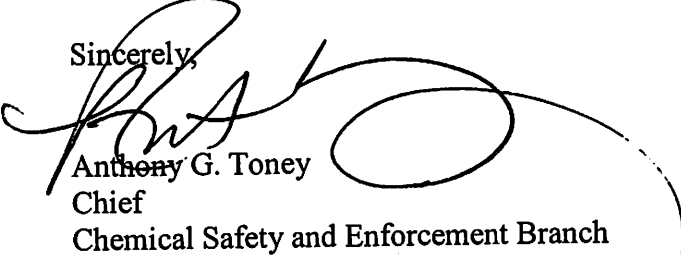
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

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 U.S. Environmental Protection Agency. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

Should you or your client have any questions about this matter or your client's compliance status in the future, please contact Ms. Melba Table of the EPA Region 4 staff at (404) 562-9086, or Mr. Robert Caplan at (404) 562-9520.

Sincerely,



Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosures

Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings

Securities and Exchange Commission Regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) require disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K, or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceeding to the SEC. This notice does not create, modify, or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by government authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel of the SEC's Division of Corporation Finance. The phone number is (202) 551-3500.

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

2016 FEB 18 AM 9:16

**USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL**

In the Matter of:)
)
MTJ American, LLC)
)
)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2014-309

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) (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, Region 4. Respondent is MTJ American, LLC.
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 EPA Region 4 by 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 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. On March 30, 2015, the EPA filed a Civil Complaint and Notice of Opportunity for Hearing alleging that Respondent violated FIFRA Section 12, 7 U.S.C. § 136j. On May 5, 2015, Respondent filed an Answer to the Complaint. After the Answer was filed, the parties participated in Alternative Dispute Resolution (ADR). After additional settlement talks, the parties desire to resolve this matter and to 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. § 22.18, this Consent Agreement and Final Order (CAFO) will conclude this matter.

II. Preliminary Statements

4. Respondent is MTJ American, LLC, located at 4276 Helena Street, Granite Falls, North Carolina 28630.
5. 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. EPA's Allegations

6. On or about July 22, 2010, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 4276 Helena Street, Granite Falls, North Carolina 28630.
7. At the time of the inspection, the inspector observed the products Fusion Advantage University Mattress and Clear Safe Detention Mattress being held for sale and/or distribution in Respondent's warehouse.
8. At the time of the inspection, the Fusion Advantage University Mattress and the Clear

Safe Detention Mattress specification sheets posted by Respondent to its Website, www.mtjamerican.com, and the Respondent's sales brochure included the following claims for the Fusion Advantage University Mattress and the Clear Safe Detention Mattress products: "Bacteria Resistant" and "Anti-Microbial/ Anti-Fungal/ Bacteriostatic/ Virus Barrier." The specification sheet for the Fusion Advantage University Mattress also made the following claim: "Silver (kills 99.99% of MRSA and other Bacteria)."

9. During the inspection, the inspector collected two sales invoices showing that in or about June or August 2010, Respondent sold and shipped Fusion Advantage University Mattresses, and that in or about June 2010, Respondent sold and shipped Clear Safe Detention Mattresses.
10. 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).
11. A pesticide is defined in Section 2(u) of FIFRA, 7 U.S.C. 136(u) as, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. An "antimicrobial pesticide" is defined in Section 2(mm) of FIFRA, 7 U.S.C § 136(mm) as "a pesticide that... is intended to ... disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms."
12. The EPA alleges that "Bacteria Resistant" and "Anti-microbial, Anti-Fungal, Bacteriostatic and Virus Barrier," and "kills 99.99% of MRSA and other bacteria" are pesticidal claims, as set forth in Pesticide Registration (PR) Notice 2000-1.
13. The EPA alleges that the advertising and specification sheets on Respondent's website

and Respondent's sales brochure pertaining to the Fusion Advantage University Mattress and the Clear Safe Detention Mattress made antimicrobial pesticidal claims, and therefore, these mattress products were antimicrobial pesticides as defined in Section 2(mm) of FIFRA.

14. The EPA alleges that the aforementioned claims made for the mattresses on Respondent's website were public health claims thereby excluding the mattresses from being exempt as treated articles under 40 C.F.R. § 152.25(a).
15. At the time of the inspection, Respondent was "distributing or selling" 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.
16. Pursuant to Section 3(a) of FIFRA, 7 U.S.C § 136a(a), no person in any state may distribute or sell to any person any pesticide that is not registered under FIFRA.
17. Pesticides that are sold and distributed in the United States are required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
18. At the time of the inspection, the Fusion Advantage University Mattress and the Clear Safe Detention Mattress were pesticides that were not registered with the EPA. Respondent asserts that the fabric used in the mattresses had been treated with an EPA-registered pesticide whose registration was cancelled in 2013, and that fabric manufacturers were allowed to use existing stocks of the cancelled pesticide to treat the mattress fabric until the stocks were depleted.
19. 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 under FIFRA.

20. The EPA alleges that Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least two occasions by selling the Fusion Advantage University Mattress and the Clear Safe Detention Mattress at the time that Respondent's advertising and specification sheets on its website included pesticidal claims for these two mattress products. Therefore, Respondent is subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
21. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), establishments which produce pesticides are required to be registered with the Administrator of EPA.
22. 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."
23. Respondent produced the Fusion Advantage University Mattress and Clear Safe Detention Mattress in an establishment that was not registered with the Administrator of EPA.
24. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA. By producing pesticides in a facility not registered with EPA, the EPA alleges that Respondent violated Sections 7 and 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).

25. 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 for violations of FIFRA.
26. 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.
27. 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 DOLLARS (\$8,000)** against the Respondent for the above-described alleged violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

28. 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.
29. 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.
30. 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.
31. Consistent with discussions with the EPA during these proceedings, Respondent certifies that it has taken steps to revise the language of the specification sheets for the mattresses to be in compliance with FIFRA, and further certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant provisions of FIFRA.
32. Compliance with this CAFO shall resolve all violations of FIFRA arising out 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.

33. 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

34. Respondent is assessed a civil penalty of **EIGHT THOUSAND DOLLARS (\$8,000)**. Two payments will be made to complete payment of the entire civil penalty including interest. The first payment of **FIFTEEN HUNDRED DOLLARS (\$1,500)** shall be paid within 30 days of the effective date of this CAFO. The second payment of **SIX THOUSAND FIVE HUNDRED ELEVEN DOLLARS AND THIRTY-SEVEN CENTS (\$6,511.37)** which includes \$11.37 of interest shall be paid by no later than April 15, 2016. Including the civil penalty and interest, the total amount that will be paid upon the completion of both payments will be **EIGHT THOUSAND ELEVEN DOLLARS AND THIRTY-SEVEN CENTS (\$8,011.37)**.
35. Respondent shall remit each payment by either a cashier's or certified check made payable to the "Treasurer, United States of America," 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 payments 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) 425-1818.

Each check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

36. At the time of each 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.

37. If the Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) shall become

immediately due and payable on the 31st day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.

38. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
39. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **EIGHT THOUSAND DOLLARS (\$ 8,000.00)** within 30 days of the effective date of this CAFO. In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining.
40. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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, 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.

41. 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.
42. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
43. This CAFO shall be binding upon the Respondent, its successors and assigns.
44. 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

45. 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: MTJ American, LLC

Docket No.: FIFRA-04-2014-3009

By: Mark R. Kiser (Signature) Date: 2/10/2016

Name: Mark R. Kiser (Typed or Printed)

Title: Manager/President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Beverly H. Banister (Signature) Date: 2-11-16
Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 16th day of February 2016.

Tanya Floyd
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: MTJ American, LLC, Docket Number FIFRA-04-2014-3009, to the addressees listed below, in the manner indicated:

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Avenue, NW
Washington, DC 20460

(via Electronic Filing & Overnight Mail)

Mr. Matthew K. Rogers, Attorney at Law
Law Offices of Matthew K. Rogers, PLLC
200 1st Avenue, NW, Suite 104
Hickory, North Carolina 28603

(via Certified Mail, Return Receipt Requested)

Melba Table
U.S. Environmental Protection Agency
Region 4, APTMD
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal mail)

Robert Caplan
U.S. Environmental Protection Agency
Region 4, ORC
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal mail)

Date: 2-18-16



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