



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 09 2009

4APT-PTSB

Certified Mail – Return Receipt Requested

Stanley Cumens, Jr., President
Free State Lumber Company, Inc.
41542 Highway 195
Haleyville, Alabama 35565

SUBJ: Docket No. FIFRA-04-2009-3039(b)
Free State Lumber Company, Inc.

Dear Mr. Cumens:

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.

As stated in Section V of the CAFO, the assessed penalty of \$17,550 is due within 30 days from the effective date. 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.

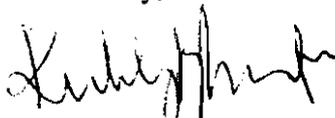
Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. Environmental Protection Agency, Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Cheryn Jones at (404) 562-9006.

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

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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 (SEC) any environmental enforcement actions taken by EPA.

Sincerely,



Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Mr. Tony Cofer
Alabama Department of
Agriculture & Industries
State File No. 071408012002

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Free State Lumber Company, Inc.)
)
Respondent.)
_____)

Docket No. FIFRA-04-2009-3039(b)

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EPA REGION 4
ATLANTA, GA

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 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 Free State Lumber Company, 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 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Cheryn L. Jones
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9006.

5. Respondent is Free State Lumber Company, Inc., an Alabama corporation, located at 41542 Highway 195, Haleyville, Alabama 35565.
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 June 22, 2008, an authorized representative of the EPA conducted an inspection at the freight hauling company S.T.I., Inc., 902 Highway 24 East, Red Bay, Alabama 35582.
8. On or about July 14, 2008, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 41542 Highway 195, Haleyville, Alabama 35565.
9. During the inspections, dimensional lumber labeled "CCA .60 AWPA C16 UC4B" was observed stacked on a trailer at S.T.I., Inc., and also identified as being produced, sold and distributed by the Respondent.

10. "Dimension or dimensional" is defined in EPA's Guidance for Uses of Chromated Copper Arsenate (CCA) dated June 16, 2004, to mean lumber that is from two inches up to, but not including, five inches thick, and that is two or more inches in width.
11. The label of CCA .60 AWPAC16 UC4B on the dimensional lumber stands in part for wood treated with Copper Chromated Arsenate (CCA) at 60 pounds per cubic foot in accordance with the American Wood Protection Association (AWPA) C-16 Standard entitled "Wood Used on Farms – Preservative Treatment by Pressure Processes."
12. Respondent treated the dimensional lumber referenced above with the pesticide "CCA Type-C Wood Preservative," EPA Registration No. 10465-28.
13. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), a "pesticide" is any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
14. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), a "pest" includes any insect, rodent, fungus or 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 micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest.
15. The pesticide CCA Type C Wood Preservative is used on wood to provide protection against pests including termites and fungi, such as ascomycetes, brown rot, dry rot, and white rot.
16. When CCA Type C Wood Preservative is applied to a wood product to protect the wood against insect or fungus infestation in accordance with label instructions, the forest product is considered a "treated article" as defined at 40 CFR § 152.25(a) and the product is exempt from the requirements of FIFRA.

17. "Treated article" is defined in 40 CFR § 152.25(a) to be an article or substance treated with, or containing, a pesticide to protect the article itself, if the pesticide is registered for such use.
18. The label on CCA Type C Wood Preservative bears directions for use after December 31, 2003, on specific categories of forest products, which do not include its use on dimensional wood under the AWWPA C16 Standard. The dimensional wood cannot be a treated article if the label for the registered pesticide does not authorize its use on the wood.
19. After December 31, 2003, CCA Type C Wood Preservative is not registered for use on dimensional wood to be used on farms under the AWWPA C16 Standard.
20. Pursuant to Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the phrase "to use any registered pesticide in a manner inconsistent with its labeling" means to use any registered pesticide in a manner not permitted by the labeling, with certain exceptions not relevant here.
21. It is unlawful according to Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), to use any registered pesticide in a manner inconsistent with its labeling.
22. Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), 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.
23. After treatment with CCA Type C Wood Preservative, Respondent labeled the dimensional wood for use under the AWWPA C16 Standard and arranged for shipment of the wood by S.T.I., Inc., to Gerber Lumber & Hardware, 4918 Kidron Road, Kidron, Ohio 44636 on or about June 22, 2008, as evidenced by the inspection on that date.

24. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term “to distribute or sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.
25. The dimensional lumber treated with CCA Type C Wood Preservative and labeled CCA .60 AWPA C16 UC4B does not meet the definition of a “treated article” as set forth in 40 CFR § 152.25(a), since the CCA Type C Wood Preservative is not registered for use on dimensional lumber under the AWPA C16 Standard.
26. The dimensional lumber treated with CCA Type C Wood Preservative, and labeled CCA .60 AWPA C16 UC4B is a “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
27. Respondent did not register the treated dimensional lumber for use under the AWPA C16 Standard as a pesticide with the Administrator prior to sale or distribution.
28. As set forth in 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 FIFRA, 7 U.S.C. § 136a.
29. 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.
30. At the time of the inspections, the labels on the dimensional wood failed to bear a warning or caution statement; directions for use; the required signal word for the product i.e., “Danger,” “Warning” or “Caution;” the EPA Registration No.; and the EPA Establishment No.

31. According to Section 2(q) of FIFRA, 7 U.S.C. § 136(q), a pesticide is misbranded if its label fails to bear a warning or caution statement; directions for use; the appropriate signal word; the assigned EPA Registration No.; and the EPA Establishment No.
32. Under 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 sell to any person any pesticide which is misbranded.
33. Respondent violated 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 civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
34. 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.
35. 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. 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 SEVENTEEN THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$17,550) 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

36. 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.
37. 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.

38. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
39. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
40. 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.
41. 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

42. Respondent is assessed a civil penalty of SEVENTEEN THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$17,550) which shall be paid within 30 days from the effective date of this CAFO.
43. 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, MO 63197-9000.

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

44. 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;

Cheryn L. Jones
Pesticides 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.

45. 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.
46. 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 principal amount not paid within 90 days of the due date.

47. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
48. This CAFO shall be binding upon the Respondent, its successors and assigns.
49. 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.

VI. Effective Date

50. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

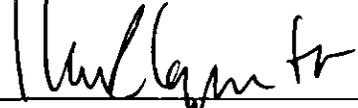
AGREED AND CONSENTED TO:

Respondent: Free State Lumber Company, Inc.
Docket No.: FIFRA 04-2009-3039(b)

By:  (Signature)
Name: Stanley Cumens (Typed or Printed)
Title: President (Typed or Printed)

Date: 6/2/09

U.S. Environmental Protection Agency

By: 
Carol L. Kemken, Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

Date: 6/25/09

APPROVED AND SO ORDERED this 8th day of July 2009.


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 Free State Lumber Co., Inc., Docket Number: FIFRA-04-2009-3039(b), to the addressees listed below.

Stanley Cumens, Jr., President
Free State Lumber Company, Inc.
41542 Highway 195
Haleyville, AL 35565

(via Certified Mail, Return Receipt Requested)

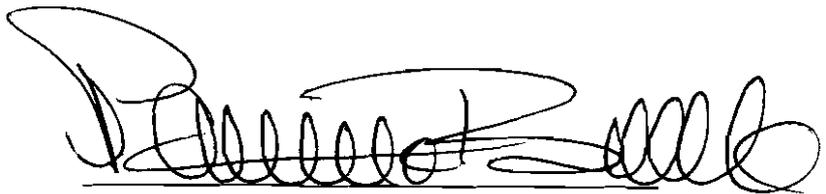
Cheryn Jones
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

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

(via EPA's internal mail)

Date: 7-9-09



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(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: Saundi Wilson on 7/6/09 (Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504 (Office) (Telephone Number)

- Non-SF Judicial Order/Consent Decree USAO COLLECTS
Administrative Order/Consent Agreement FMO COLLECTS PAYMENT
SF Judicial Order/Consent Decree DOJ COLLECTS
Oversight Billing - Cost Package required: Sent with bill
Other Receivable
Not sent with bill
This is an original debt
Oversight Billing - Cost Package not required
This is a modification

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

The Total Dollar Amount of the Receivable: \$ 17,550 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA-04-2009-3039(6)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office:

The IFMS Accounts Receivable Control Number is: Date

If you have any questions, please call: of the Financial Management Section at:

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, D.C. 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 to:

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