



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

MAR 16 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Albert Davis
Davis Manufacturing and Packaging, Inc.
541 Proctor Avenue
Scottdale, Georgia 30079

Re: Davis Manufacturing and Packaging, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2016-3014(b)

Dear Mr. Davis:

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 black ink, appearing to read "Anthony G. Toney", with a large, stylized flourish at the end.

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosures

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.

5. Respondent Davis Manufacturing and Packaging, Inc. is licensed to do business in the State of Georgia and has its principal place of business located at 541 Proctor Avenue, Scottdale, Georgia 30079.
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 September 3, 2015, an authorized representative of the EPA conducted a producer establishment inspection at Respondent's facility located at 541 Proctor Avenue,

Scottdale, Georgia 30079, to determine Respondent's compliance with FIFRA.

8. At the time of the inspection, the inspector observed the pesticide products Flea and Tick Shampoo (EPA Registration Number [Reg. No.] 69061-12-50591) and Flea and Tick Mist (EPA Reg. No. 69061-6-50591) being offered for sale and/or distribution at the facility. The labels for these two EPA-registered pesticide products did not match the current EPA-approved labels. Specifically, the label for Flea and Tick Shampoo contained additional language such as "Contains the botanical insecticide Pyrethrum and extract of the Chrysanthemum flower," and the label for Flea and Tick Mist bore the incorrect EPA Reg. No. 60691-6-50591 instead of the correct EPA Reg. No. 69061-6-50591.
9. 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.
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. 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.
12. On March 31, 2016, an authorized representative of the EPA returned to Davis Manufacturing and Packaging, Inc. to collect shipping records for sales that had been

made at or near the time of the inspection conducted on September 3, 2015, as described in paragraph 7. During the March 31, 2016 inspection, the inspector collected shipping invoices documenting that the Respondent sold and distributed, on at least one occasion, the products Flea and Tick Mist and Flea and Tick Shampoo with labels that bore incorrect information as described in paragraph 8.

13. 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.
14. Based on the evidence collected during the aforementioned inspections, the EPA alleges that Respondent sold and/or distributed two misbranded pesticides including Flea and Tick Mist and Flea and Tick Shampoo as described above.
15. 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.
16. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling and/or distributing two misbranded pesticides 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.
17. 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.
18. 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).
19. 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 **TEN**

THOUSAND DOLLARS (\$10,000) 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

20. 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.
21. 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.
22. 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.
23. 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.
24. 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

25. Respondent is assessed a civil penalty of **TEN THOUSAND DOLLARS (\$10,000)**. The **penalty** shall be paid within ninety (90) days of the effective date of this CAFO.

26. 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.

27. 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.

28. 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 90 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.
29. 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.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns.
32. 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.

VI. Effective Date

33. 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: Davis Manufacturing and Packaging, Inc.

Docket No.: FIFRA-04-2016-3014(b)

By: Al Davis (Signature)

Date: FEBRUARY 13, 2017

Name: AL DAVIS (Typed or Printed)

Title: CEO (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By: Cecilia H. Kemberger Date: 3/3/17
Beverly H. Banister,
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 14th day of March 2017.

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 Davis Manufacturing and Packaging, Inc. Docket Number: FIFRA-04-2016-3014(b), to the addressees listed below.

Mr. Albert Davis
Chief Executive Officer
Davis Manufacturing and Packaging, Inc.
541 Proctor Avenue
Scottdale, Georgia 30079

(via Certified Mail, Return Receipt Requested)

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

(via EPA's internal mail)

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

(via EPA's internal mail)

3/16/17
DATE

Claudette B. Hancey
for Patricia Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-9511