



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

FEB 01 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Karen Weiss
Marc Weiss Companies, Inc.
5935 Ravenswood Road
Fort Lauderdale, Florida 33312

Re: Docket No. FIFRA-04-2010-3044(b)
Marc Weiss Companies, Inc.

Dear Ms. Weiss:

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.

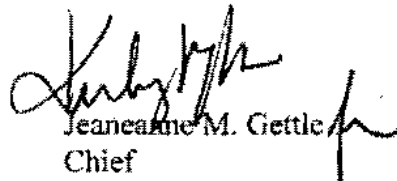
As stated in Section V of the CAFO, the assessed penalty of \$5,000 is to be paid in twelve payments. The first payment is due within 90 days from the effective date. Remaining payments are due in accordance with Section V, Item 29 of the CAFO. Please ensure that the face of your cashier's or certified check includes the name of the company and the Docket Number of this case.

Penalty payment questions should be directed to Ms. Jennifer Keene either by telephone at (513) 487-2103 or by written correspondence to her attention at the U.S. Environmental Protection Agency's 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. Dawn Johnson at (404) 562-9017.

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,



Jeaneane M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: State Lead Agency
State File No. 107-034-2106

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

IN THE MATTER OF:)
)
 Marc Weiss Companies, Inc.)
)
)
 Respondent.)
 _____)

Docket No.: FIFRA-04-2010-3044(b)

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FIFRA-04-2010-3044(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. § 136/(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 Marc Weiss Companies, Inc.
2. 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

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 is authorized to receive service for EPA in this proceeding:

Dawn Johnson
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9017.

5. Respondent is Marc Weiss Companies, Inc., a Florida corporation, located at 5935 Ravenswood Road, E20, Fort Lauderdale, Florida 33312.
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 August 15, 2007, an authorized EPA inspector inspected Respondent's facility located at 5935 Ravenswood Road, Fort Lauderdale, Florida 33312.
8. The above inspection revealed that the product "Algae Magic" was distributed by Respondent as an aquarium product.
9. The product is a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that it is intended to prevent, destroy, repel and mitigate pests.
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. At the time of the inspection, the Algae Magic product was not registered as a pesticide with the EPA in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a.
12. The inspector documented that the Algae Magic product was offered for sale by Respondent both at the Respondent's facility and on Respondent's website.
Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "distribute or sell" to include: sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
13. Under 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.
14. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136f.
15. At the time of the inspection, Respondent produced the product in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment.
16. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful to produce a pesticide in any State unless the establishment is registered with the Administrator of EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e.
17. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136f.

18. At the time of the inspection, the Algae Magic product was misbranded as the term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q), in that the labeling for the product did not contain the following information:
- a. An establishment number;
 - b. Storage and disposal statement;
 - c. Warning or caution statement; and,
 - d. First aid statement.
19. Under FIFRA 12(a)(1)(E), 7 U.S.C. § 136j(12)(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.
20. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(12)(a)(1)(E), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
21. 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.
- 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 **FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00)** 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

22. 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.
23. 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.
24. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
25. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
26. 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.
27. 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 **FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00)**. Twelve payments will be made to complete payment of the entire civil penalty including interest. The first installment is due within 90 days of the effective date of this CAFO. The subsequent eleven payments shall be due in 90 day

intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **FIVE THOUSAND EIGHTY ONE DOLLARS AND SIXTY FOUR CENTS (\$5,081.64)**. Respondent shall make quarterly payments of \$423.47, less TWO CENTS (.02 cents) from the last payment, until penalty is paid in full.

30. Respondent shall remit each payment 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;

Dawn Johnson
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.

32. If 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) and all accrued interest 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.
33. 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.
34. 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 **FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00)** within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. §13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining together with

interest accrued up to the date of such full payment.

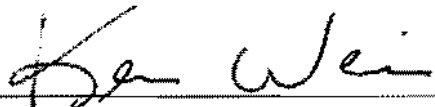
35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. §13.11(a), interest on any civil penalty assessed in a 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 thirty (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.
36. 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.
37. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
38. This CAFO shall be binding upon the Respondent, its successors and assigns.
39. 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

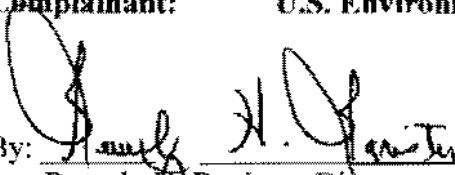
40. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:


Respondent: Marc Weiss Companies, Inc.
Docket No.: FIFRA-04-2010-3044(b)

By:  (Signature) Date: 12/13/10
Name: Karen Weiss (Typed or Printed)
Title: President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 1/19/11
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 28th day of January 2011.


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 Marc Weiss Companies, Inc., Docket Number: FIFRA-04-2010-3044(b), to the addressees listed below.

Ms. Karen Weiss
Marc Weiss Companies, Inc.
5935 Ravenswood Road
Fort Lauderdale, Florida 33312

(via Certified Mail, Return Receipt Requested)

Dawn Johnson
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
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, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

Date: 2-1-11



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, Georgia 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 1/24/10
(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

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYER: Marc Weiss Companies Inc.
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable is 5000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number F. FRA 04 2010 3044 (6)

The Site Specific Superfund Account Number _____

The Designated Regional/Headquarters Program Officer: _____

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 7811, Benjamin Franklin Station
Washington, D.C. 20544 | 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 | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Consent (EAD) |