



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 03 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jon McPhail
Attorney at Law
Jon McPhail and Associates, LLC
P.O. Box 783
Alpharetta, Georgia 30009

Re: D-Mand Better Products, LLC
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2013-3012(b)

Dear Mr. McPhail:

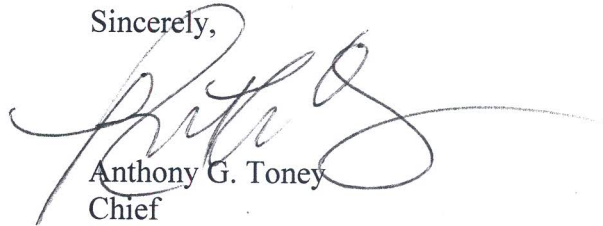
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's 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 your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the 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 client's compliance status in the future, please contact Mr. Phillip Beard of the EPA Region 4 staff at (404) 562-9012.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony G. Toney', with a long horizontal flourish extending to the right.

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Georgia Department of Agriculture

consent agreements memorializing settlements between the EPA and Respondents.

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:

Phillip Beard
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012.

5. Respondent is D-Mand Better Products, LLC (“D-Mand”), a corporation, located at 6230 Shiloh Road, Suite 200, Alpharetta, Georgia 30005.
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 September 17, 2010, authorized representatives of the EPA conducted an inspection at an Aqua EZ, Inc., (“Aqua EZ”), facility located at 6100 Wheaton Drive, in Atlanta, Georgia, EPA Establishment Number 58331-GA-001.
8. On or about September 22, 2010, authorized representatives of the EPA conducted a follow-up inspection of the Aqua EZ facility located at 6100 Wheaton Drive, in Atlanta,

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Georgia.

9. During the inspections, the D-Mand products “M-1 Advanced Mildew Treatment” and “M-1 Advanced Mildewcide” were identified as being sold by Respondent and distributed by Aqua EZ on behalf of Respondent.
10. During the inspections, evidence was obtained documenting that the M-1 Advanced Mildew Treatment product label bore pesticidal claims such as “M-1 Advanced Mildew Treatment” and “Resists Mildew, Mold, Algae, On Dry Film.”
11. During the inspections, evidence was obtained documenting the use of the term “mildewcide” – a term constituting a pesticidal claim – in the name of the M-1 Advanced Mildewcide product.
12. At the time of the September 22, 2010, inspection, shipping records were obtained demonstrating that eight (8) shipments of M-1 Advanced Mildewcide were shipped on or about September 21, 2010.
13. On or about December 5, 2011, authorized representatives of the EPA conducted an inspection of a Home Depot retail establishment, Store #6986, located at 2525 Piedmont Road NE in Atlanta, Georgia (hereafter “Home Depot Inspection”).
14. At the time of the Home Depot Inspection, the M-1 Advanced Mildew Treatment product was observed as being offered for sale from that establishment.
15. Respondent sold or distributed at least one (1) shipment of M-1 Advanced Mildew Treatment to the Home Depot.
16. Subsequent information provided by the Home Depot demonstrates that Respondent completed sixty (60) sales of M-1 Advanced Mildewcide to the Home Depot in 2012.

17. At the time of sale and/or distribution, M-1 Advanced Mildewcide, EPA Reg. No. 1529-41-21346, was no longer registered as a pesticide with the EPA. This product's supplement registration was canceled on May 4, 2010.
18. At the time of the inspections, M-1 Advanced Mildew Treatment was a pesticide, but was not registered with the EPA.
19. The term pesticide is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean any substance (or mixture of substances) intended for a pesticide purpose, *i.e.*, use for the preventing, destroying, repelling, or mitigating any pest.
20. 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).
21. Pursuant to 40 C.F.R. § 152.15, a substance is considered to be intended for a pesticidal purpose if, *inter alia*, the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.
22. The label affixed to the M-1 Advanced Mildew Treatment products stated and/or implied that this product was intended for a pesticidal purpose. Therefore, pursuant to Section 2(u) of FIFRA, and 40 C.F.R. § 152.15, the M-1 Advanced Mildew Treatment products are a pesticide.
23. The use of the term "mildewcide" in the name of the M-1 Advanced Mildew product states or implies that this product is intended for a pesticidal purpose. Therefore, pursuant to Section 2(u) of FIFRA, and 40 C.F.R. § 152.15, the M-1 Advanced Mildewcide

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product is a pesticide.

24. Respondent “distributes or sells” 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.
25. 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.
26. 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 or whose registration has been canceled.
27. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least sixty nine (69) occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
28. 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.
29. 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.
30. 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 **ONE THOUSAND DOLLARS** (\$1,000) 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.

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IV. Consent Agreement

31. 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.
32. 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.
33. 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.
34. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
35. 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.
36. 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

37. Respondent is assessed a civil penalty of **ONE THOUSAND DOLLARS (\$1,000)**. Three payments will be made to complete payment of the entire civil penalty including interest. The first payment shall be made by September 30, 2013. The subsequent two payments shall be due in 90-day intervals thereafter. Including civil penalty and interest,

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the total amount that will be paid upon the completion of all payments will be **ONE THOUSAND FIVE DOLLARS and TWELVE CENTS** (\$1,005.12). Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	September 30, 2013	\$335.04
2	December 31, 2013	\$335.04
3	March 31, 2014	\$335.04

38. 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 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) 418-1028

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

39. 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;

Phillip Beard
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.

40. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not 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.
41. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the 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.
42. 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 **ONE THOUSAND DOLLARS** (\$1,000) within 30 days of the effective date of this

CAFO 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 principle balance remaining, together with interest accrued up to the date of such full payment.

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

47. 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: D-Mand Better Products, LLC
Docket No.: FIFRA 04-2013-3012(b)

By:  (Signature) Date: 8/15/2013

Name: Dennis Makowski (Typed or Printed)

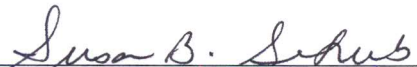
Title: President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 8/23/13

Carol L. Kemker, Acting Director
Air, Pesticides and Toxic
Management Division

APPROVED AND SO ORDERED this 29 day of August 2013.


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 D-Mand Better Products, LLC, Docket Number: FIFRA-04-2013-3012(b), to the addressees listed below:

Mr. Jon McPhail (via Certified Mail, Return Receipt Requested)
Attorney at Law
Jon McPhail and Associates, LLC
P.O. Box 783
Alpharetta, Georgia 30009

Phillip Beard (via EPA's internal mail)
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Date: 9-3-13



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