



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 13 2017

UNITED PARCEL SERVICE

Mr. Daniel H. Thompson, Esquire  
Berger Singerman  
313 North Monroe Street  
Suite 301  
Tallahassee, Florida 32301

Re: DG Hardware, Inc.  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2017-3007(b)

Dear Mr. Thompson:

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 Justin Mullenix of the EPA Region 4 staff at (404) 562-8997.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney  
Chief

Chemical Safety and Enforcement Branch

Enclosures

cc: Sarah Oglesby  
Florida Department of Agriculture  
and Consumer Services

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

**In the Matter of:** )  
 )  
 DG Hardware, Inc. )  
 )  
 Respondent. )  
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**Docket No.: FIFRA-04-2017-3007**

**USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL  
2017 SEP 13 PM 3:45  
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 DG Hardware, Inc. (DG Ace Hardware).
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 the EPA Region 4 by the EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the 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

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:

Justin T. Mullenix  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-8997.

5. Respondent DG Ace Hardware is doing business in the State of Florida. DG Ace Hardware's headquarters is located at 2881 Clark Road, Suite 6, Sarasota, Florida 34231.
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.
7. Respondent is a "producer" defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3, as the person who manufactures, prepares, compounds, propagates, processes any pesticide, packages, repackages, labels, relabels, or otherwise changes the container of any pesticide.
8. The term "pesticide" is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

9. A pest is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as any insect, rodent, nematode, fungus weed or any 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).
10. The term “establishment” is defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3, to mean, any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.
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. Pursuant to 40 C.F.R. § 167.20(a)(1), any establishment where a pesticide is produced must be registered with the Agency. Registration of an establishment with the Agency activates a unique, site specific registration number known as the EPA Establishment Number (EPA Est. No.) which is issued to the applicant pursuant to 40 C.F.R. § 167.20(d).
13. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), no person shall produce any pesticide in any State unless the establishment in which it is produced is registered with the Administrator of the EPA.
14. It is unlawful for a producer to violate any of the provisions of Section 7(a) of FIFRA pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L).

### **III. Specific Allegations**

15. The Respondent owns and operates several hardware stores where pesticide products including Ultra Chlor Sodium Hypochlorite (EPA Reg. No. 72122-20002) are produced, distributed and/or sold.

16. On or about July 17, 2015, the EPA reviewed two Applications for Registration of Pesticide-Producing and Device Producing Establishment (EPA Form 3540-8) submitted by the Respondent for their establishments located at 14308 Palm Beach Boulevard, Fort Myers, Florida 33905, and 3170 Bee Ridge Road, Sarasota, Florida 34239. Upon review, the EPA observed certain inaccuracies on the two submitted EPA Form 3540-8 including, but not limited to, incorrect information regarding the company's Authorized Agent.
17. On July 18, 2015, in response to the EPA's inquiry about the inaccuracies above-referenced in paragraph 16, a representative of the Respondent made contact with the EPA and indicated that the company had three assigned pesticide-producing establishment numbers: EPA Est. No. 58938-FL-1 for the establishment located at 204 Saint Joe Plaza Drive, Palm Coast, Florida 32164 ("Establishment 1"); EPA Est. No. 58938-FL-2 for the establishment at 117 Flagler Plaza Drive, Palm Coast, Florida 32137 ("Establishment 2"); and EPA Est. No. 58938-FL-3 for the establishment at 600 North State Street, Bunnell, Florida 32110 ("Establishment 3"). The EPA reviewed its records and determined that the Respondent had only been issued one establishment number, EPA Est. No. 58938-FL-1, assigned to the store above-referenced as Establishment 1. EPA confirmed that the numbers assigned to the Respondent's Establishments 2 and 3 had not been issued by the EPA and were invalid establishment numbers.
18. On August 5 and 6, 2015, at the request of the EPA, the Florida Department of Agriculture and Consumer Services (FDACS) conducted producer establishment/marketplace inspections at the Respondent's three establishments above-referenced in paragraph 16. Based on the FDACS investigation it was determined that the numbers the Respondent identified as EPA establishment numbers issued for Establishments 2 and 3 above-referenced in paragraph 16, were provided to the Respondent by the supplier of the pesticide product, Ultra Chlor Sodium Hypochlorite.

19. On December 21, 2016, the EPA sent a Show Cause Letter to the Respondent. On January 19, 2017, and June 7, 2017, the EPA held show cause meetings via conference calls with the Respondent. During the show cause meetings with the EPA, the Respondent confirmed the FDACS findings above-referenced in paragraph 18, and acknowledged that they erroneously relied upon the invalid establishment numbers provided to them by the supplier of Ultra Chlor Sodium Hypochlorite.
20. At the time of the inspection above-reference in paragraph 18, the Respondent was producing the pesticide, Ultra Chlor Sodium Hypochlorite at Establishments 2 and 3, which did not have valid EPA Establishment numbers as required pursuant to 40 C.F.R. § 167.20(a)(1), and were therefore unregistered establishments.
21. Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) and Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L), by producing the pesticide, Ultra Chlor Sodium Hypochlorite, at the two (2) unregistered establishments identified in paragraph 16 as Establishments 2 and 3. 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.
22. 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).
23. 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 ONE HUNDRED DOLLARS (\$10,100)** 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**

24. 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.
25. 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.
26. 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.
27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA as it relates to its establishments.
28. 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.
29. 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**

30. Respondent is assessed a civil penalty of **TEN THOUSAND ONE HUNDRED DOLLARS (\$10,100)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
31. 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.

32. 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; and

Justin T. Mullenix  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street S.W.  
Atlanta, Georgia 30303-8960.

33. 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 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.

34. 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.
35. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
36. This CAFO shall be binding upon the Respondent, its successors and assigns.
37. 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 is intentionally left blank.**

**VI. Effective Date**

38. 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: DG Hardware, Inc.**

**Docket No.: FIFRA-04-2017-3007(b)**

By: [Signature] (Signature) Date: 7/31/2017  
Name: Betty N. Schaefer (Typed or Printed)  
Title: Vice President Operations (Typed or Printed)

**Complainant: U. S. Environmental Protection Agency**

By: [Signature] Date: 8/18/17  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

**APPROVED AND SO ORDERED** this 13<sup>th</sup> day of September 2017.

[Signature]  
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 DG Hardware, Inc., Docket Number: FIFRA-04-2017-3007(b), to the addressees listed below.

Daniel H. Thompson, Esq.  
Berger Singerman  
313 N Monroe Street  
Suite 301  
Tallahassee, Florida 32301

(via United Parcel Service)

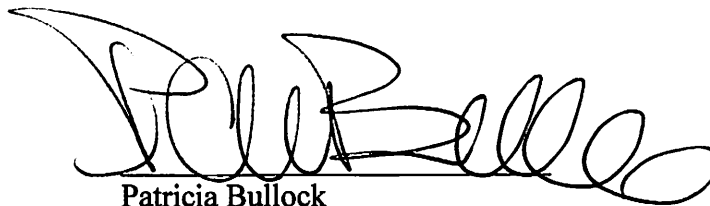
Mr. Robert Caplan  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(via EPA's internal mail)

Mr. Justin Mullenix  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(via EPA's internal mail)

9-13-17  
DATE



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