



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JITV

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MAY 08 2007

4APT-PTSB

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Keith E. Barker, Manager
Product Safety and Compliance
Carolina Biological Supply Company
2700 York Road
Burlington, NC 27215-3398

SUBJ: Docket No. FIFRA-04-2007-3010(b)
Carolina Biological Supply Company

Dear Mr. Barker:

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 CFR Part 22.

Please make note of the provisions in Section IV of the Final Order, with respect to payment of the assessed penalty of \$10,900, which is due within 30 days from the effective date of the CAFO. If paying by cashier's or certified check, we request that the payment be identified by writing the company name and docket number on the face of the check.

Also enclosed is a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." 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 the EPA. Please note that the contact phone number on page three of the Notice has been changed to (202) 551-3115.

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Carolina Biological Supply Company)
)
Respondent.)
_____)

Docket No. **FIFRA-04-2007-3010(b)**

HEARING CLERK
2007 MAY -8 PM 2:51
EPA REGION IV

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) (hereinafter "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 Carolina Biological Supply Company.
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 CFR § 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 Carolina Biological Supply Company, a North Carolina corporation, located at 2700 York Road, Burlington, NC 27215-3398.
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. On or about December 26, 2006, an authorized representative of the EPA went to the Respondent's web site at www.carolina.com.
8. At the website, the representative noted the following products were offered for sale:
Plant Growth Regulators BioKit containing Gibberellic Acid; Plant Growth Regulator Response Kit containing Cytokinin Medium; and Introduction to Auxins: Weedkiller Kit containing 2, 4-Dichlorophenoxyacetic Acid Paste.
9. The above products were identified as being produced and distributed by the Respondent.

10. Gibberellic Acid, Cytokin Medium and 2, 4-Dichlorophenoxyacetic Acid Paste are pesticides as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
11. 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).
12. Respondent “distributes or sells” pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
13. At the time of the offer for sale over the website, the pesticides described in paragraph no. 8 above were not registered as pesticides with EPA.
14. It is unlawful according Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), 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.
15. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling and distributing three unregistered pesticides and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
16. At the time of the offer for sale over Respondent’s website, Respondent produced the repackaged pesticides as described in paragraph no. 8 in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment.

17. As set forth in Section 12(a)(1)(L) of FIFRA, 7 U.S.C. § 136j(a)(1)(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.
18. Respondent violated Section 12(a)(1)(L) of FIFRA, 7 U.S.C. § 136j(a)(1)(L) and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
19. 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.
20. 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.
21. 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 NINE HUNDRED DOLLARS (\$10,900) 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.

III. 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.
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.

IV. Final Order

28. **Respondent is assessed a civil penalty of TEN THOUSAND NINE HUNDRED DOLLARS (\$10,900) which shall be paid within 30 days from the effective date of this CAFO.**
29. 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
Cincinnati Accounting Operations
Mellon Lock Box 371099M
Pittsburgh, PA 15251-7099

**The check shall reference the name and the Docket Number of the CAFO
[“Carolina Biological Supply Company, FIFRA-04-2007-3010(b)”].**

30. 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;

Cheryn L. Jones
Pesticides Management 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.

31. 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.
32. 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 principle amount not paid within 90 days of the due date.

- 33. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
- 34. This CAFO shall be binding upon the Respondent, its successors and assigns.
- 35. 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.

V. Effective Date

- 36. 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:

Carolina Biological Supply Company

By:  (Signature)
 Name: DANIEL E JAMES (Typed or Printed)
 Title: VICE President (Typed or Printed)

Date: April 24, 2007

U.S. Environmental Protection Agency

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

Date: MAY 07 2007

APPROVED AND SO ORDERED this 8th day of May, 2007.


 Susan B. Schub
 Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Carolina Biological Supply Company, Docket No.FIFRA-04-2007-3010(b), on the parties listed below in the manner indicated.

For Complainant:

Cheryn L. Jones
Pesticides Management Section
U.S. EPA - Region 4, 4APT-PTSB
61 Forsyth Street
Atlanta, GA 30303-8960

Alan E. Dion
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, GA 30303-8960

(Via EPA's internal mail)

For Respondent:

Keith E. Barker, Manager
Product Safety and Compliance
Carolina Biological Supply Company
2700 York Road
Burlington, NC 27215-3398

(Via Certified Mail- Return
Receipt Requested)

Date: 5-8-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960
(404) 562-9511

