



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR 22 2008

4APT-PTSB

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Tiffany Pope
President
Spa & Tub Manufacturers, Inc.
310 N. Craft Highway
Chickasaw, Alabama 36611

SUBJ: Docket No. FIFRA-04-2008-3014(b)
Spa & Tub Manufacturers, Inc.

Dear Ms. Pope:

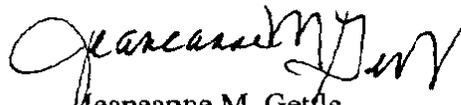
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 CFR Part 22.

Please make note of the provisions in Section IV of the Final Order, with respect to payment of the assessed penalty of \$3,120, which is due within 30 days from the effective date of the CAFO. As required by paragraph IV of this CAFO, please ensure that the face of your cashier's or certified check includes the name of the company name and docket number of this case.

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 notifies you 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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Meaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures (2)

cc: Tony Cofer, Director, AL Dept. of Agriculture & Industries
Tommy McDaniel, Director, MS Dept. of Agriculture and Commerce

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION 4
2009 APR 22 AM 8:56
HEARING CLERK

In the Matter of:)
)
Spa & Tub Manufacturers, Inc.) Docket No. FIFRA-04-2008-3014(b)
)
)
Respondent.)
_____)

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 Spa & Tub Manufacturers, Inc.
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:

Phillip Beard
Pesticides Management Section
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012.
5. The Respondent is Spa & Tub Manufacturers, Inc., an Alabama corporation located at 310 N. Craft Highway, Chickasaw, Alabama 36611.
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 July 25, 2007, an authorized representative of the EPA conducted an inspection at Spa & Tub Manufacturers, Inc., located at 3612 Highway 90, Gautier, Mississippi 39553.
8. During the aforementioned inspection, the “Spa & Tub Chlorinating Sanitizer,” EPA Registration Number 33458-23-68904, was identified as being produced, sold, and distributed by the Respondent.
9. “Spa & Tub Chlorinating Sanitizer” is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u). The definition of pesticide includes 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. 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.
12. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 CFR § 167.3.

At the time of the inspection, Respondent’s establishment was registered with EPA and was assigned EPA Establishment Number 068904-MS-001.
13. The *Pesticide Report for Pesticide-Producing Establishments* for reporting year 2006, submitted by Spa & Tub Manufacturers, Inc., contained false information. The report contained information on the product name “Sun Magic Solution,” EPA Registration Number 33458-20002-68904, which became an inactive, cancelled pesticide on October 24, 2003. The report failed to include the required information on the pesticide “Spa & Tub Chlorinating Sanitizer,” EPA Registration Number 33458-23-68904. Submission of an accurate annual pesticide production report is required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c).
14. It is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for any producer to violate any of the provisions at Section 7 of FIFRA.
15. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), on at least one occasion.

15. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), on at least one occasion.
16. 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. § 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 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.
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 THREE THOUSAND ONE HUNDRED TWENTY DOLLARS (\$3,120), against the Respondent for the above-described violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

III. 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.
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 EPA and agrees to pay the civil penalty as set forth in this CAFO.

23. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
24. 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.
25. 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

26. **Respondent is assessed a civil penalty of THREE THOUSAND ONE HUNDRED TWENTY DOLLARS (\$3,120), which shall be paid within 30 days from the effective date of this CAFO.**
27. Respondent shall remit the penalty by either a cashier's or certified check 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, MO 63197-9000.

The check shall reference the name and the Docket Number of the CAFO ("Spa & Tub Manufacturers, Inc., FIFRA-04-2008-3014(b)").

28. 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;

Phillip Beard
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.

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. 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. 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

34. 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:

Spa & Tub Manufacturers, Inc.

By: Tiffany D. Pope (Signature) Date: 3-27-08
Name: Tiffany D. Pope (Typed or Printed)
Title: President (Typed or Printed)

U.S. Environmental Protection Agency

By: Kenneth Mitchell Date: 4/10/08
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 21st day of April 2008.

Susan B. Schub
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: Spa & Tub Manufacturers, Inc., Docket No. FIFRA-04-2008-3014(b), on the parties listed below in the manner indicated.

Phillip Beard
Pesticide Management Section
U.S. EPA - Region 4, 4APT-PTSB
61 Forsyth Street
Atlanta, GA 30303-8960

(Via EPA's internal mail)

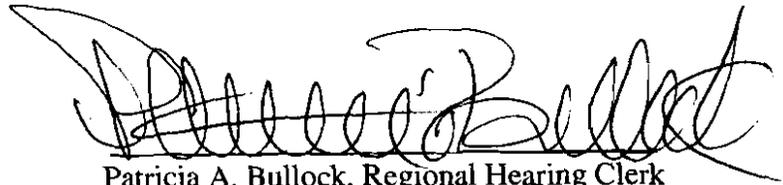
Robert Caplan
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, GA 30303-8960

(Via EPA's internal mail)

Ms. Tiffany Pope, President
Spa & Tub Manufacturers, Inc.
310 N. Craft Highway
Chickasaw, Alabama 36611

(Via Certified Mail - Return Receipt Requested)

Date: 4-22-08



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

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 J Wilson on 4/18/08
 (Name) (Date)

in the OEH at (404) 562-9503
 (Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Spa + Tub Manufacturers Inc.
 (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 3120
 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2008 3014 (b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____

If you have any questions, please call: _____ of the Financial M

DISTRIBUTION:

- A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page should be mailed to:
- Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044
 - Originator Designated
 - Originator Designated
 - Designated Regional C
- B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the
- Originating Office
 - Regional Hearing Clerk
 - Designated Regional C
 - Designated Regional C

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Restricted Delivery Fee (Endorsement Required)		
Total Pct		
Sent To	Ms. Tiffany Pope President	
Street, Apt or PO Box	SPA & Tub Manufacturers, Inc.	
City, State	310 N. Craft Highway Chickasaw, AL 36611	

PS Form 3800, June 2002 See Reverse for Instructions

4724 2551 2000 0007 9592 2002 0020 2002 2002