



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

OCT 29 2008

Certified Mail – Return Receipt Requested

Mr. Kirk Moore
Kirkland's Wood
4681 Lamb Avenue
Union Point, Georgia 30669-1443

SUBJ: Docket No. FIFRA-04-2009-3000(b)
Kirkland's Wood

Dear Mr. Moore:

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.

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.

Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Phillip Beard at (404) 562-9012.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne M. Gettle".

Jeanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Tommy Gray, Georgia Department of Agriculture

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2009 OCT 29 PM 12:40
HEARINGS CLERK

In the Matter of:)
)
Kirkland's Wood)
)
)
 Respondent.)
_____)

FIFRA Docket No. FIFRA-04-2009-3000(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. § 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 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Kirkland's Wood.
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 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.

III. Specific Allegations

5. Respondent is Kirkland's Wood, located at 4681 Lamb Avenue, Union Point, Georgia 30669.
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 April 28, 2005, an authorized representative of the EPA conducted an inspection at Kirkland's Wood, located at 4681 Lamb Avenue, Union Point, Georgia 30669.
8. During the aforementioned inspection, three products were identified as being produced, sold and distributed by the Respondent as follows:

"No Does Natural Deer Repellant"

"Holey Moley Natural Mole Repellant"

"Shoo Natural Deer Repellant"

9. No Does Natural Deer Repellant, Holey Moley Natural Mole Repellant and Shoo Natural Deer Repellant 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.
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, three pesticides (No Does Natural Deer Repellant, Holey Moley Natural Mole Repellant and Shoo Natural Deer Repellant) were not registered pesticides with EPA.
12. Respondent distributed or sold the pesticides on at least six occasions as described below:
 - Invoice #6652, ship date May 17, 2004
 - Invoice #6685, ship date June 1, 2004
 - Invoice #6690, ship date September 16, 2004
 - Invoice #6860, ship date November 9, 2004
 - Invoice #6981, ship date March 22, 2005
 - Invoice #6924, ship date April 12, 2005

According to FIFRA 12(a)(1)(A), it is unlawful to distribute or sell any pesticide that is unregistered.

13. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least six occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
14. At the time of the inspection, Respondent produced the three pesticides, No Does Natural Deer Repellant, Holey Moley Natural Mole Repellant and Shoo Natural Deer Repellant in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment.
15. 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.
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) 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 ZERO DOLLARS (\$0) against the Respondent for the above-described violations, based on financial information submitted by Respondent. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. 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. Complainant and Respondent, upon consideration of the inability of the Respondent to pay the proposed penalty, agree to an assessment of a penalty of ZERO DOLLARS (\$0).
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. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14 of FIFRA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.
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.

V. Final Order

26. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into the Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

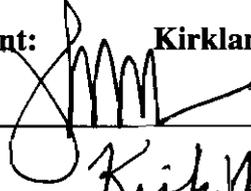
- 27. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
- 28. This CAFO shall be binding upon the Respondent, its successors and assigns.
- 29. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

VI. Effective Date

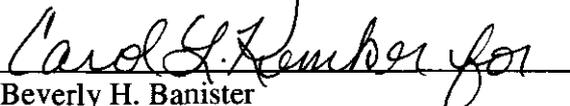
- 30. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

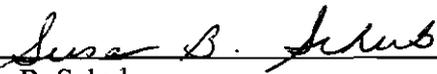
Respondent: Kirkland's Wood

By:  (Signature) Date: 11/4/08
 Name: Kirk Mone (Typed or Printed)
 Title: owner / partner (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 10/21/08
 Beverly H. Banister
 Director
 Air, Pesticides and Toxics
 Management Division
 61 Forsyth Street
 Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 29th day of October 2008

By: 
 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 Kirkland's Wood, Docket Number: FIFRA-04-2009-3000(b), to the addressees listed below.

Mr. Kirk Moore
Kirkland's Wood
4681 Lamb Avenue
Union Point, GA 30669

(via Certified Mail, Return Receipt Requested)

Phillip Beard
Pesticide
Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Robin Allen
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Date:

10-29-08



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511