



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

'AUG 12 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Deborah A. Chadbourne, Esq.
Counsel for Sergeant's Pet Care
Products, Inc.
529 Bierys Bridge Road
Bethlehem, Pennsylvania 18017

Re: Docket No. FIFRA-04-2010-3042(b)
Sergeant's Pet Care Products, Inc.

Dear Ms. Chadbourne:

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.

As stated in Section V of the CAFO, the assessed penalty of \$6,100 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the Docket Number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. Environmental Protection Agency's Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Patricia Livingston at (404) 562-9171.

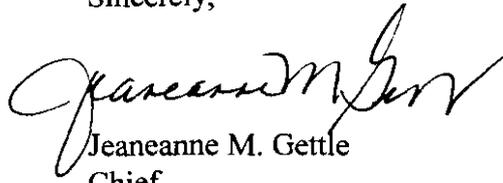
Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle". The signature is fluid and cursive, with a large initial "J" and "G".

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Kathy Booker, TDOA

Kenneth E. Barnett, NYSDEC
Case No. CO5-20090922-111

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

IN THE MATTER OF:)
)
Sergeant's Pet Care Products, Inc.)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2010-3042(b)

2016 AUG 12 PM 2:18
RECEIVED
EPA REGION 4

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 Sergeant's Pet Care Products, Inc.
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:

Patricia Livingston
Pesticides Section
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9171.

III. Specific Allegations

5. Respondent is Sergeant's Pet Care Products, Inc., incorporated in the State of Nebraska, and doing business in Tennessee. Respondent is located at 4418 Malone Road, Memphis, Tennessee 38118-2171.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), in that it is a corporation, and as such is subject to FIFRA and the regulations promulgated thereunder.
7. Respondent is a "registrant" as defined by Section 2(y) of FIFRA, 7 U.S.C. § 136(y) in that it is a person who has registered pesticides pursuant to the provisions of FIFRA.
8. Respondent is a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), in that it is a person who manufactures, prepares, compounds, propagates, or processes any pesticide.

9. "Pesticide" is defined by 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.
10. Respondent produces pesticides "to distribute or sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that the pesticides are held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver.
11. Respondent produces, distributes, and sells multiple flea and tick products for use on cats containing the pesticide registered with EPA under EPA Registration No. 69332-3-2517.
12. Respondent produces, distributes, and sells multiple flea and tick products for use on dogs containing the pesticide registered with EPA under EPA Registration No. 2517-80.
13. On or about March 6, 2009, an authorized representative of EPA, the New York State Department of Environmental Conservation, Bureau of Pesticide Management, conducted an inspection at Target, located at 3031 Route 50, Saratoga Springs, New York, 12866.
14. The inspection revealed an insert which was included in a package of Sergeant's Gold Flea & Tick Squeeze-On for Cats, for Cats 5 Pounds and Over, which had not been submitted to EPA as part of the product registration (EPA Registration No. 69332-3-2517).
15. Among other claims, the package insert found by the inspector as described in paragraph 14 presents a chart comparing Sergeant's product to competing products and claims: "No other brand offers as much protection as Sergeant's Gold Squeeze-On for Cats."

16. After receiving a copy of the inspection report, Respondent investigated further and determined that the insert was added to the product packaging at the Respondent's production facility located at 4418 Malone Road, Memphis, Tennessee 38118-2171.
17. Respondent determined that the insert at issue was included in the packages of an additional three product lines that it distributes and sells for use on cats pursuant to EPA Registration No. 69332-3-2517.
18. Respondent further determined that a similar insert was included in the packages of eight different product lines that it distributes and sells for use on dogs pursuant to EPA Registration No. 2517-80.
19. Respondent further determined that the insert included in the dog products was not provided to EPA as part of the EPA Registration for those products (EPA Registration No. 2517-80).
20. On May 29, 2009, Respondent voluntarily disclosed to EPA the information provided in Paragraphs 13-19.
21. Claims made in the package inserts described in Paragraphs 14-19 substantially differ from the claims submitted to EPA in connection with the pesticides registered under EPA Registration Nos. 69332-3-2517 and 2517-80.
22. Under Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), it is unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3.

23. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B) on at least one occasion and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
24. Respondent's inclusion of the unapproved inserts in the packages described in paragraphs 14-19 was misleading in that it suggested that all statements on the inserts were EPA-approved.
25. According to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
26. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any registered pesticide that is misbranded.
27. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least one occasion and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
28. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA proposes to assess a total civil penalty of **SIX THOUSAND ONE HUNDRED DOLLARS** (\$6,100) 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.

IV. Consent Agreement

29. For the purposes of this CAFO, Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations set forth above.
30. 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.
31. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
32. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
33. 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.
34. 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

35. Respondent is assessed a civil penalty of SIX THOUSAND ONE HUNDRED DOLLARS (\$6,100) which shall be paid within 30 days from the effective date of this CAFO.

36. Respondent shall remit the penalty by either an electronic funds transfer or cashier's, certified, or corporate check, made payable to the "Treasurer, United States of America," and, if by check, 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 on its face the name of the Respondent and the Docket Number of the CAFO.

37. 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;

Patricia Livingston
Pesticides 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.

38. 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.

AGREED AND CONSENTED TO:

Respondent: Sergeant's Pet Care Products, Inc.
Docket No.: FIFRA-04-2010-3042(b)

By: Deborah A. Chadbourne (Signature) Date: August 2, 2010

Name: Deborah A. Chadbourne (Typed or Printed)

Title: Attorney for Sergeant's Pet Care Products, Inc. (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Carol L. Kemker Date: 8/10/10
Carol L. Kemker, Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 12th day of August, 2010.

Susan B. Schub
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 Sergeant's Pet Care Products, Inc., Docket Number: FIFRA-04-2010-3042(b), to the addressees listed below.

Deborah A. Chadbourne, Esq. (via Certified Mail, Return Receipt Requested)
Attorney for Sergeant's Pet Care Products, Inc.
529 Bierys Bridge Road
Bethlehem, Pennsylvania 18017

Patricia Livingston (via EPA's internal mail)
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, GA 30303

Keri Powell (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, GA 30303

Date: August 12, 2010

for Claudette A. Hareed
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