



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 31 2010^T

UNITED PARCEL SERVICES

Dan Calhoun, President
La Tortilleria, Inc.
2900 Lowery Street
Winston Salem, North Carolina 27101

Re: Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2010-3049(b)
La Tortilleria, Inc.

Dear Mr. Calhoun:

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 \$6,318 with interest is due according to the payment schedule outlined therein. The first payment is due within 30 days from the effective date of the CAFO. 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, 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 Mr. Mark Bloeth at (404) 562-9013.

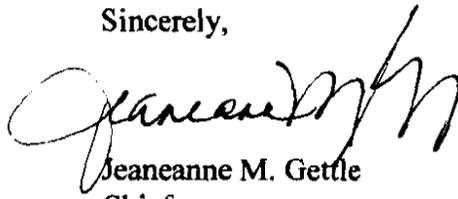
Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document

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

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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,



Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Karen Hunt
NC Department of Agriculture
& Consumer Services

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

IN THE MATTER OF:)
)
La Tortilleria, Inc.)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2010-3049(b)

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ATLANTA, GA

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (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 La Tortilleria, 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:

Keri Powell
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

5. Respondent is La Tortilleria, Inc., a North Carolina corporation, located at 2900 Lowery Street, Winston Salem, North Carolina 27101.
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.

III. Specific Allegations

7. On or about April 12, 2007, an authorized representative of EPA conducted an inspection at La Tortilleria, Inc., 2900 Lowery Street, Winston Salem, North Carolina 27101.
8. During the aforementioned inspection, it was determined that on December 20, 2006, Respondent purchased 120 cases of the unregistered pesticide "Clorox Concentrado – Desinfecta" from Triunfo-Mex Imports, 150 Russell Street, City of Industry, California 91744 and received this shipment on January 5, 2007.

9. "Clorox Concentrado – Desinfecta" was manufactured in Mexico and was distributed by Clorox De Mexico.
10. The container label for "Clorox Concentrado – Desinfecta" was lacking an EPA product registration number, an EPA producer establishment number and the required ingredient statement on the front panel of the label. In addition, the entire product label including the directions for use and the precautionary statements was only written in Spanish.
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. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) defines the term "distribute or sell" to include: distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.
13. Respondent "distributes or sells" pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
14. At the time of the inspection, "Clorox Concentrado – Desinfecta" was offered for sale or distribution and was not registered as a pesticide with EPA.

15. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful 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.
16. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and is subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
17. Pursuant to FIFRA 2(q)(1)(E), 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if any word, statement, or other information required to appear on the label is not prominently placed thereon.
18. Pursuant to FIFRA 2(q)(1)(F), 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if its labeling does not contain directions for use which are necessary for effecting the purposes of FIFRA.
19. Pursuant to 40 C.F.R. § 156.10(a)(3), all required label or labeling text shall appear in the English language.
20. 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 pesticide which is misbranded.
21. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
22. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes EPA to assess a civil penalty.

23. 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.
24. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, EPA proposes to assess a total civil penalty of **SIX THOUSAND THREE HUNDRED EIGHTEEN DOLLARS** (\$6,318) against the Respondent for the above violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

25. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth but neither admits nor denies any findings of fact or conclusion of law set forth above.
26. 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.
27. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
28. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
29. 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

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

31. Respondent is assessed a civil penalty of **SIX THOUSAND THREE HUNDRED EIGHTEEN DOLLARS** (\$6,318). Four payments will be made to complete payment of the entire civil penalty including interest. The first payment is due within thirty (30) days of the effective date of this CAFO and subsequent payments will be due in ninety (90) day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **SIX THOUSAND THREE HUNDRED FIFTY-SEVEN DOLLARS AND FIFTY-TWO CENTS** (\$6,357.52).

Respondent shall make payments in accordance with the following schedule.

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	30 days of filing of CAFO	\$1,589.38
2	120 days of filing of CAFO	\$1,589.38
3	210 days of filing of CAFO	\$1,589.38
4	300 days of filing of CAFO	\$1,589.38

32. Respondent shall remit each penalty payment by forwarding 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
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

The check shall reference on its face the name of the Respondent and the Docket Number assigned to this CAFO.

33. 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;

Mark D. Bloeth
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.

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

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: **La Tortilleria, Inc. Docket No. FIFRA-04-2010-3049(b)**, on the parties listed below in the manner indicated.

Mr. Dan Calhoun
President
La Tortilleria, Inc.
2900 Lowery Street
Winston Salem, North Carolina 27101

(via United Parcel Service)

Mark Bloeth
Chemical Products
and Asbestos Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(via EPA's internal mail)

Keri Powell
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(via EPA's internal mail)

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HEARING CLERK
EPA REGION 4

Date: August 31, 2010

Claudette A. Hanez
Patricia A. Bullock, Regional Hearing Clerk
U.S. EPA - Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303
(404) 562-9511

La Tortilleria, Inc.
Docket No.: FIFRA-04-2010-3049(b)