



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

November 26, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No. 7011 1150 0000 2643 8111

Mr. Guy Sako
Defense Soap, LLC
13000 Athens Ave. Suite C313
Lakewood, Ohio 44107

Consent Agreement and Final Order In the Matter of
Defense Soap LLC. Docket No. FIFRA-05-2015-0011

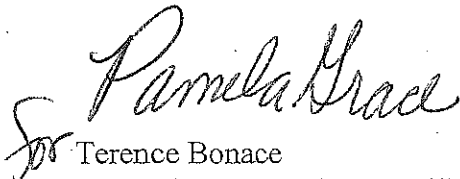
Dear Mr. Sako:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on November 26, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,000 is to be paid in the manner described in paragraphs 29 and 30. Please be certain that the docket number is written on both the transmittal letters and on the checks. Payment is due by December 26, 2014, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Handwritten signature of Terence Bonace in cursive script.

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. The term “distribute or sell” means “to 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.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states,

or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

40 C.F.R. § 152.15(a)(1).

15. The Administrator of EPA may assess a civil penalty against any wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C.

§ 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

17. Respondent is a retailer.

18. Respondent owned or operated a place of business located at 13000 Athens Avenue, Suite 350, Lakewood, Ohio during the calendar year 2013.

19. On January 16, 2013, an inspector employed by the Ohio Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Lakewood, Ohio.

20. During the January 16, 2013 inspection, the inspector collected a label and shipping records for *Super Shield Plus Laundry Protector* which Respondent was holding for distribution or sale.

21. Respondent’s label for *Super Shield Plus Laundry Protector* collected on January 16, 2013, states, “Shields fabrics from bacteria, viruses & mold,” “Provides an invisible layer of continuous antimicrobial protection on all fabrics,” “Guards fabrics against MRSA, Staph, Ringworm, & Herpes”

22. The shipping label collected during the January 16, 2013 inspection states that on January 11, 2013, "Super Shield Laundry Protector" was shipped to an individual at a New Jersey address for the price of \$39.06 including shipping and handling.

23. On May 21, 2014, Respondent's web site at www.defensesoap.com stated, where *Super Shield Plus Laundry Protector* is offered for sale, "The Defense Soap Super Shield Plus Laundry Treatment with Microbe-Barrier Technology" and "Defense Soap's Super Shield Plus guards the apparel & fabrics you compete in from transferring harmful microbes to your skin."

24. *Super Shield Plus Laundry Protector* is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. Respondent sold *Super Shield Plus Laundry Protector* on January 11, 2013 to an individual in New Jersey.

26. *Super Shield Plus Laundry Protector* was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on January 11, 2013.

27. Respondent's distribution or sale of the unregistered pesticide *Super Shield Plus Laundry Protector* constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

28. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$5,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,000 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note Defense Soap LLC and the docket number of this CAFO.

30. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Catherine Garypie (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

31. This civil penalty is not deductible for federal tax purposes.

32. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

34. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

35. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

36. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

37. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

38. The terms of this CAFO bind Respondent, its successors and assigns.

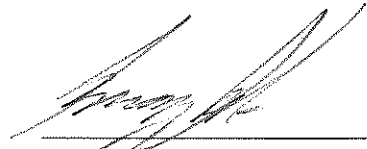
39. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

40. Each party agrees to bear its own costs and attorneys' fees, in this action.

41. This CAFO constitutes the entire agreement between the parties.

Defense Soap LLC, Respondent

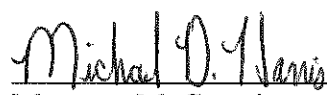
10-27-14
Date



Guy Sako
Owner
Defense Soap LLC

United States Environmental Protection Agency, Complainant

11/18/14
Date

 *for M.G.*

Margaret M. Guerriero
Director
Land and Chemicals Division


In the Matter of:
Defense Soap LLC
Docket No. FIFRA-05-2015-0011



Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11/24/2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Defense Soap, LLC, was filed on November 26, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7011 1150 0000 2643 8111, a copy of the original to the Respondent:

Mr. Guy Sako
Defense Soap, LLC
13000 Athens Ave. Suite C313
Lakewood, Ohio 44107



and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Catherine Garypie, Assistant Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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