



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

OCT 12 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ronald H. Bice, Jr., Esq.
Performance Healthcare Products, Inc.
4515 Harding Road
Suite 103
Nashville, Tennessee 37205

Re: Performance Healthcare Products, Inc.
Docket No.: FIFRA-04-2011-3028(b)

Dear Mr. Bice:

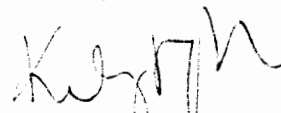
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the first installment of the assessed penalty of \$9,000, in the amount of \$479.06, 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 Mr. Bryson Lehman either by telephone at (513) 487-2123 or by written correspondence to his 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 Ms. Molly Miller at (404) 562-9684.

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 the EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly E. Bingham". The signature is fluid and cursive, with a large initial "K" and a long, sweeping tail.

Kimberly E. Bingham
Acting Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Kathy Booker
Tennessee Dept. of Agriculture
State File No. 0809100205402

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

In the Matter of:

Performance Healthcare
Products, Inc.

Respondent.

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Docket No.: FIFRA-04-2011-3028(b)

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HEARING CLERK**

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) (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 Performance Healthcare 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 is authorized to receive service for EPA in this proceeding:

Molly Miller
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9684.

5. Respondent is Performance Healthcare Products, Inc., a Tennessee Corporation, doing business as Performance Scrubs. Respondent's facility is located at 1820 Grey Pointe Drive, Brentwood, Tennessee.
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. Respondent sells performance scrubs products to healthcare professionals on-line at its website located at www.performancescrubs.com.
8. On or about August 9, 2010, an inspector, duly appointed by the EPA Administrator, inspected the Respondent's Facility, and on or about September 21, 2010, an EPA inspector visited and viewed Respondent's website.
9. During the aforementioned inspection and website review, the inspectors observed that performance scrubs were offered for sale by Performance Healthcare Products, Inc.

10. At the time of the inspection and website review, performance scrubs were pesticides as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that they were being sold and distributed as “a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating a pest”
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. Further, performance scrubs were antimicrobial pesticides as defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), in that the products were intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms on the fabric by “preventing the spread of bacteria and controlling infection,” “inhibiting 99% of the bacteria that causes odor” and “making them more sanitary than any scrubs available today.”
13. 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.
14. Pesticides that are sold and distributed in the United States are required to be registered with the EPA.
15. As advertised and offered for sale at Respondent’s website, performance scrubs were antimicrobial pesticides which were not registered with the EPA.

16. The inspector documented at least one offer for sale of performance scrubs.
17. 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.
18. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
19. As advertised and offered for sale at Respondent's website referenced in paragraph 7, the performance scrubs were misbranded in that they failed to bear information required by EPA including, but not limited to, the EPA Establishment Number, directions for use necessary for effecting the purpose for which the product was intended, a warning or caution statement, and an ingredient statement.
20. A pesticide is misbranded pursuant to Section 2(q) of FIFRA, 7 U.S.C. § 136(q), if its label does not bear the registration number assigned under Section 7 to each establishment in which it was produced, or does not bear directions for use, a warning or caution statement, and an ingredient statement.
21. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.
22. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
23. 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.
24. 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.

25. 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 **NINE THOUSAND DOLLARS** (\$9,000.00) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

26. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
27. 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.
28. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
29. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
30. 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.

31. 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. Respondent is assessed a civil penalty of **NINE THOUSAND DOLLARS (\$9,000.00)**. Eighteen installment payments will be made to complete payment of the entire civil penalty including interest. The first installment is due within 30 days of the effective date of this CAFO, or by September 1, 2011, whichever is later. The subsequent seventeen payments shall be due in one month intervals thereafter, on the first day of each consecutive month. Including the civil penalty and interest, the total amount to be paid upon the completion of all payments will be **NINE THOUSAND SIXTY FOUR DOLLARS and SIX CENTS (\$9,064.06)**. Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	Within 30 days of filing of CAFO or September 1, 2011, whichever is later.	\$479.06
2-18	One month intervals thereafter on the first day of each month from October 1, 2011 – February 1, 2013.	\$505.00

27. Respondent shall remit the penalty by 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
 P.O. Box 979077
 St. Louis, Missouri 63197-9000.

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

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;

Molly Miller
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.

29. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) shall become immediately due and payable on the 31st day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.
30. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity,

amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

31. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **NINE THOUSAND DOLLARS (\$9,000.00)** within 30 days of the effective date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.
32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). 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 principal amount not paid within 90 days of the due date.
33. 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.

34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. This CAFO shall be binding upon the Respondent, its successors and assigns.
36. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

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VI. Effective Date

37. 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: Performance Healthcare Products, Inc.
Docket No.: FIFRA 04-2011-3028(b)

By: [Signature] (Signature) Date: Sept 9th 11
Name: F. AIRBT BEST (Typed or Printed)
Title: PRESIDENT + CEO (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: [Signature] Date: Oct 3, 2011
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 6th day of October 2011.

[Signature]
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 Performance Healthcare Products, Inc., Docket No. FIFRA 04-2011-3028(b), on the parties listed below in the manner indicated:

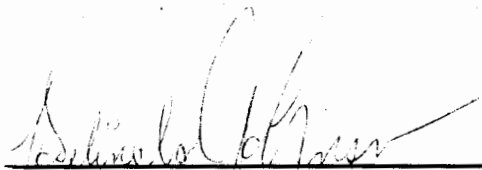
Marlene J. Tucker (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Molly Miller (Via EPA's internal mail)
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

Ronald H. Bice, Esq. (Certified Mail - Return Receipt Requested)
4515 Harding Road,
Suite 103
Nashville, Tennessee 37205

Date: 10/11/2011



for Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511