



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

FEB 16 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kevin Newell
C.E.O.
Kevin Newell d/b/a Ticks-N-All LLC
4503 Winderwood Circle
Orlando, Florida 32835

Re: Kevin Newell d/b/a Ticks-N-All LLC
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2017-3004(b)

Dear Mr. Newell:

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. Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the respondent's name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

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 any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document, "SEC" refers to the Securities and Exchange Commission. Should you have any questions about this matter or your compliance status in the future, please contact Patricia Livingston, Case Development Officer, of the EPA Region 4 staff at (404) 562-9171.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosures

cc: Florida Department of Agriculture & Consumer Services
Attn: George Hayslip

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA**

2017 FEB 16 AM 7:06
HEARING CLERK
OFFICE OF GENERAL COUNSEL

In the Matter of:)
)
Kevin Newell)
d/b/a Ticks-N-All LLC)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2017-3004 (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) (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. Respondent is Kevin Newell d/b/a Ticks-N-All LLC.
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by the EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an

enforcement action as the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between the EPA and Respondents.

3. 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

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

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

5. Respondent is Kevin Newell d/b/a Ticks-N-All LLC, a limited liability company, located at 4503 Winderwood Circle, Orlando, Florida 32835.
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 December 2, 2015, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 4503 Winderwood Circle, Orlando, Florida 32835.
8. The inspection revealed that Respondent markets and sells four products that Respondent

believes satisfy the requirements for exemption from registration pursuant to Section 25(b) of FIFRA 7 U.S.C. § 136w and 40 C.F.R. § 152.25(f): Insect Repellent All Purpose with Lyme Guard, Tick Repellent with Lyme Guard, Flea & Tick 4 Dogs, Flea & Tick 4 Cats. In order to be subject to the exemption from registration, the product must not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease. See 40 C.F.R. § 152.25(f)(3)(ii).

9. At the time of the inspection, the labels on the four Ticks-N-All products as well as the Ticks-N-All website bore public health claims including “with Lyme Guard” and “Ticks N All helps reduce exposure to insect bites that may carry viruses such as Lyme, West Nile virus and many other viruses.”
10. Because the labels and website for the pesticidal products described above included claims that the products control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease, these pesticide products are not exempt under Section 25(b) of FIFRA and 40 C.F.R. § 152.25(f) and must be registered pursuant to Section 3 of FIFRA.
11. A “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
12. 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).
13. At the time of the inspection, Insect Repellent All Purpose with Lyme Guard, Tick Repellent with Lyme Guard, Flea & Tick 4 Dogs and Flea & Tick 4 Cats were not registered as pesticides with the EPA.
 14. 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.
 15. Pesticides that are sold and distributed in the United States are required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136(e).
 16. 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.
 17. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least one occasion by distributing an unregistered pesticide. Respondent therefore is subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l(a).
 18. 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.
 19. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the 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.

20. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and financial documentation submitted by the Respondent to the EPA, the EPA has determined that Respondent has a limited ability to pay a penalty and proposes to assess a total civil penalty of **ONE HUNDRED DOLLARS (\$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

21. 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.
22. 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.
23. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
24. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
25. 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 the 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.
26. 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

27. Respondent is assessed a civil penalty of **ONE HUNDRED DOLLARS (\$100)** which shall be paid within 30 days from the effective date of this CAFO.
28. 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.

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819.

29. 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, S.W.
Atlanta, Georgia 30303-8960;

Patricia Livingston
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

30. 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.
31. Pursuant to 31 U.S.C. § 3717, the 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. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the date required. 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.
32. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
33. This CAFO shall be binding upon the Respondent, its successors and assigns.
34. 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

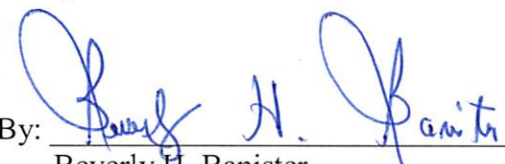
35. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

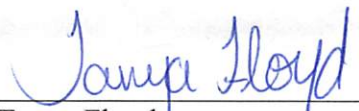
Respondent: Kevin Newell d/b/a Ticks-N-All LLC
Docket No.: FIFRA-04-2017-3004(b)

By:  (Signature) Date: 1-9-17
Name: Kevin Newell (Typed or Printed)
Title: C.E.O (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 1-29-17
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 14th day of February 2017.


Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

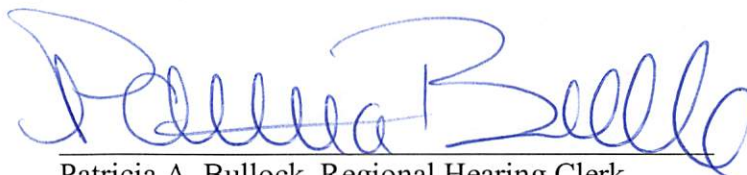
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order in the Matter of Kevin Newell d/b/a Ticks-N-All LLC, Docket Number: FIFRA-04-2017-3004(b), to the addressees listed below:

Mr. Kevin Newell (via Certified Mail, Return Receipt Requested)
C.E.O.
Kevin Newell d/b/a Ticks-N-All LLC
4503 Winderwood Circle
Orlando, Florida 32835

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

Robert Caplan (via EPA's internal mail)
Senior Attorney
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Date: 2-16-17



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511