



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JAN 02 2014

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Ha Jung  
d/b/a Kim Brothers, Inc.  
4021 West Hillsborough Avenue  
Tampa, Florida 33614

Re: Kim Brothers, Inc.  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2013-3016(b)

Dear Mr. Jung:

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. 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 Melba Table of the EPA Region 4 staff at (404) 562-9086.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony G. Toney". The signature is written in a cursive style with a horizontal line extending to the right.

Anthony G. Toney  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

cc: Florida Department of Agriculture  
and Consumer Services  
State File No.: 211-001-3069 JPV

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

**In the Matter of:** )  
 )  
Ha Jung d/b/a Kim Brothers, Inc. )  
 )  
Respondent. )  
\_\_\_\_\_ )

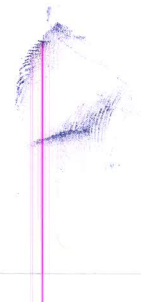
**Docket No.:** FIFRA-04-2013-3016(b)

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EPA REGION IV  
2014 JAN -2 AM 7:17  
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. Respondent is Ha Jung d/b/a Kim Brothers, Inc.
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:

Melba Table  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9086.

5. Respondent is Ha Jung d/b/a Kim Brothers, Inc., a Florida corporation, located at 4021 West Hillsborough Avenue, Tampa, Florida 33614.
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 January 7, 2011, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 4021 West Hillsborough Avenue, Tampa, Florida 33614.



8. At the time of the inspection, the authorized representative of the EPA observed the product “Naphthalene” being offered for sale and/or distribution on a shelf in a retail market.
9. Portions of the label of Naphthalene are written in Korean. Portions in English include: “Naphthalene Camphor has a high germicidal complete removal of insects by fragrant.”
10. Because the label for Naphthalene bore pesticidal claims, this product is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any 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. 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.
13. 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. § 136a.
14. At the time of the inspection, Naphthalene was not registered as a pesticide with the 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), 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.
17. At the time of the inspection, the label on the pesticide failed to bear directions for use, a warning or caution statement, which includes the appropriate toxicity category word, and the ingredient statement.
18. Pursuant to Section 2(q) of FIFRA, 7 U.S.C. § 136(q), a pesticide is misbranded if its label fails to bear directions for use, a warning or caution statement, and the ingredient statement.
19. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide that is misbranded.
20. 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 a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
21. 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.
22. 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.
23. 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 HUNDRED DOLLARS (\$900)** 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**

24. 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.
25. 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.
26. 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.
27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
28. 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.
29. 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**

30. Respondent is assessed a civil penalty of **NINE HUNDRED DOLLARS (\$900)** which shall be paid within thirty (30) days from the effective date of this CAFO.
31. 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 penalty payment by one of the methods below.



Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

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  
US EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1818.

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

32. 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;

Melba Table  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.



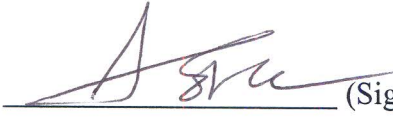
33. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
34. Pursuant 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 ninety (90) days of the due date.
35. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
36. This CAFO shall be binding upon the Respondent, its successors and assigns. 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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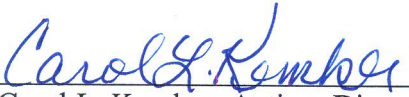
Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**


**Respondent:** Kim Brothers, Inc.  
**Docket No.:** FIFRA-04-2013-3016(b)

By:  (Signature) Date: 12/4/13  
Name: Hasun Jung (Typed or Printed)  
Title: Owner (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 12/19/13  
Carol L. Kemker, Acting, Director  
Air, Pesticides and Toxics  
Management Division

**APPROVED AND SO ORDERED** this 24 day of December 2013.

  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

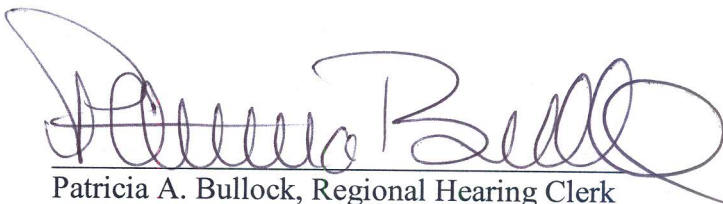
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Kim Brothers, Inc., Docket Number: FIFRA-04-2013-3016(b), to the addressees listed below.

Mr. Ha Jung (via Certified Mail, Return Receipt Requested)  
Owner  
Kim Brothers, Inc.  
4021 West Hillsborough Avenue  
Tampa, FL 33614

Ms. Melba Table (via EPA's internal mail)  
Pesticide Section  
U.S. EPA Region 4  
61 Forsyth S.W.  
Atlanta, GA 30303

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

Date: 1-2-14



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