



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 09 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Clyde Duncan
Controller
Dalen Products, Inc.
11110 Gilbert Drive
Knoxville, Tennessee 37932

Re: Dalen Products, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2016-3127(b)

Dear Mr. Duncan:

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 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 Dr. Karen Hill of the EPA Region 4 staff at (404) 562-8972.

Sincerely,

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

Anthony G. Toney
Chief

Chemical Safety and Enforcement Branch

Enclosures

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

**USEPA, REGION 4
OFFICE OF REGIONAL
COUNSEL**

2016 AUG -9 AM 7:17

HEARING CLERK

IN THE MATTER OF:)
)
Dalen Products, Inc.)
)
Respondent)
)
)
)
_____)

Docket No.: FIFRA-04-2016-3122(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 Dalen Products, 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 redelegateed 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 Respondent.

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:

Karen M. Hill, Ph.D.
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960
(404) 562-8972.

5. Respondent Dalen Products Inc. is licensed to do business in the State of 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.
7. Respondent is a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. §136(w), and 40 C.F.R. § 167.3.

III. Specific Allegations

8. Producers operating an establishment registered with the EPA are required to submit to the Administrator of the EPA an annual report which indicates the types and amounts of

pesticides or active ingredients which they are currently producing, which they produced during the past year, and which they sold or distributed during the past year, pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations promulgated at 40 C.F.R. § 167.85.

9. On November 23, 2015, Respondent registered its establishment located at 11110 Gilbert Drive, Knoxville, Tennessee with the EPA. The EPA Establishment Number created for the Respondent's establishment is 50677-TN-001. Prior to this date, Respondent's facility was not registered with EPA as a pesticide producing establishment.
10. Respondent is a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. §136(w), and 40 C.F.R. § 167.3 which states that a producer is one which manufacturers, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.
11. A pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
12. Pursuant to FIFRA Section 2(h), 7 U.S.C. § 136 (h), a device is any instrument or contrivance which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man, bacteria, virus, or other microorganisms on or in living man or other living animals).
13. A pest as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 (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).

14. On December 15, 2015, Respondent submitted a Pesticide Report for Pesticide-Producing and Device-Producing establishments [EPA Form 3540-16] for reporting year 2014 to the EPA which declared production of pesticide device products “Holographic Scare Tape” and “Rotating Head Owl.”
15. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a) , it is unlawful for any person to produce any pesticide or device or active ingredient used in producing a pesticide subject to Section 7 of FIFRA in any State unless the establishment in which it is produced is registered with the Administrator.
16. The Respondent was producing pesticides in its establishment during the year 2014 preceding the date when Respondent registered its establishment in 2015. Therefore, the Respondent is in alleged violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a) for producing a pesticide in an unregistered producing establishment.
17. On May 31, 2016, Respondent submitted to the EPA a signed Consent Agreement and Final Order for the alleged violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a) for producing pesticide devices “Holographic Scare Tape” and “Rotating Head Owl” in an unregistered producing establishment.
18. Within the CAFO, referenced above in paragraph 17, Respondent notified EPA of the production of two additional pesticide devices “Guard’n Eyes Balloon” and “Solar Action Owl” during year 2014 in the unregistered EPA Producing Establishment.

19. On June 7, 2016, Respondent submitted an updated Pesticide Report for Pesticide-Producing and Device-Producing establishments [EPA Form 3540-16] for reporting year 2014 to the EPA which declared production of four (4) pesticide device products, “Holographic Scare Tape,” “Rotating Head Owl,” “Guard’n Eyes Balloon” and “Solar Action Owl.”
20. The Respondent is in alleged violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a) for producing a pesticide device in an unregistered producing establishment on four (4) separate occasions.
21. The CAFO referenced in paragraph 17 that was signed by the Respondent was not signed by EPA nor was it ratified by the Regional Judicial Officer. Respondent and EPA have both signed this CAFO that includes all reported production of pesticide devices for year 2014.
22. 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.
23. 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(s).
24. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA assessed a total civil penalty of **TEN THOUSAND, TWO HUNDRED AND SIXTY DOLLARS (\$10,260)** 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

25. 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.
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 the 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. Respondent agrees to submit to EPA all future annual pesticide-production reports required under Section 7 of FIFRA, 7 U.S.C. § 136(e), on or before the March 1st due date. Respondent shall send the reports by means of certified mail, return receipt requested, to the following address:

U.S. EPA – Region 4
Sam Nunn Building
Chemical Safety and Enforcement Branch
Pesticides Section
61 Forsyth Street
Atlanta, Georgia 30303-8960.
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 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.

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

32. Respondent is assessed a civil penalty of **TEN THOUSAND, TWO HUNDRED AND SIXTY DOLLARS (\$10,260)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
33. Respondent shall remit payment of the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check. **The check shall reference on its face the name of the Respondent and Docket number of this CAFO.**

Payment of the penalty shall be sent 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 payment 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.

34. 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;

Karen M. Hill, Ph.D.
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960; and

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

35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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. 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, the 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.

36. 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.
37. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
38. This CAFO shall be binding upon the Respondent, its successors and assigns.
39. 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.

THIS SECTION INTENTIONALLY LEFT BLANK

VI. Effective Date

40. 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: Dalen Products, Inc.

Docket No.: FIFRA-04-2016-3127(b)

By: Clyde Duncan (Signature) Date: 6.27.16
Name: Clyde Duncan (Typed or Printed)
Title: Controller (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By: Carol L. Kemker for Date: 7/26/16
Carol L. Kemker
Acting Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 5th day of August 2016.

Tanya Floyd
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 Dalen Products, Inc., Docket Number: FIFRA-04-2016-3127 (b), to the addressees listed below:

Mr. Clyde Duncan
Controller
Dalen Products, Inc.
11110 Gilbert Drive
Knoxville, Tennessee 37932

(via Certified Mail, Return Receipt Requested)

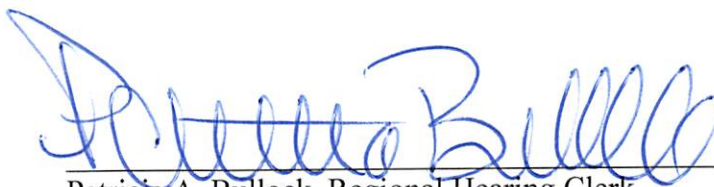
Karen Hill, Ph.D.
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(via EPA's internal mail)

Robert Caplan
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(via EPA's internal mail)

Date: 8-9-16



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