



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

JUN 26 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Amanda Rabby
Atticus, LLC
5000 CentreGreen Way, Suite 100
Carey, North Carolina 27513

Re: Atticus, LLC
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2019-3019(b)

Dear Ms. Rabby:

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.

Should you have any questions about this matter or your compliance status in the future, please contact Kanoelehua Ho of the U.S. Environmental Protection Agency Region 4 staff at (404) 562-9162.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth
Chief
Chemical Safety and Land Enforcement Branch

Enclosure

cc: Jennifer Johnston, NCDA&CS

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

2019 JUN 26 PM 4:51

In the Matter of:)
)
Atticus, LLC)
)
Respondent.)
)
)
)
_____)

Docket No.: FIFRA-04-2019-3019(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 Atticus, LLC. (hereinafter Atticus or Respondent).
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 delegated this authority under FIFRA to the Regional Administrators by the EPA Delegation 5-12. The Regional Administrator recently redelegateed this authority to the Director of the Enforcement and Compliance Assurance Division, pursuant to the Memorandum entitled: Region 4

Delegations Manual Introduction Supplement for Redelegations to Officials in New Organizational Realignment dated April 22, 2019. Pursuant to that Delegation, the Director of the Enforcement and Compliance Assurance 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. Respondent Atticus is licensed to do business in the State of North Carolina.
5. 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.
6. Respondent is a "producer" as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), as the person who manufactures, prepares, compounds, propagates, or processes any pesticide.
7. The term "pesticide" is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
8. 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).

9. The term “establishment” is defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3, to mean any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.
10. 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.
11. Pursuant to Section 17(c) FIFRA, 7 U.S.C. § 136o(c) and the regulations at 19 C.F.R. § 12.112, an importer desiring to ship pesticides into the United States is required to submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices (NOA) [EPA Form 3540-1], prior to the arrival of the shipment(s) into the United States, or a United States Customs and Border Protection (CBP) Automated Commercial Environment (ACE) Data Processing System entry, prior to the arrival of the shipment(s) into the United States.
12. The term “misbranded” as defined by Section 2(q) of FIFRA, 7 U.S.C. § 136 (q), includes labeling which bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
13. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

III. Specific Allegations

14. On or around October 11, 2018, the licensed customs broker W. N. Epstein & Co., Inc. submitted an NOA concurrent with the filing of entry documentation via the CBP's ACE Data Processing System on behalf of Atticus for the importation of one shipment, under Entry Number 323-38050480, of the pesticide Bentazon 4 Herbicide (EPA Reg. No. 83520-26) which contained a total of 56 drums, each drum containing 264 gallons. The ACE Entry presented to the EPA as described above, notified the EPA that the pesticide entered the United States through the Port of Long Beach, California, and was ultimately destined for the Port of Atlanta, Georgia.
15. A copy of the product label uploaded by Epstein into the ACE system for the shipment of the above-referenced pesticide did not fully match the pesticide's most current EPA-approved pesticide master label. More specifically, the label was missing information under personal protective equipment, engineering control, user safety precautions, and directions for use.
16. On October 12, 2018, the EPA notified Epstein by email that the shipment should be held intact at the Port of Long Beach and not moved or further distributed until further notice.
17. Based on its determination that the drums of pesticide were misbranded, the EPA denied entry of the shipment of the pesticide product Bentazon 4 Herbicide and on October 15, 2018, emailed a Notice of Refusal of Admission to Atticus and Epstein that declined to allow the misbranded pesticide to be used, sold or distributed in the United States.
18. On or around October 15, 2018, the EPA was contacted by Atticus via phone inquiring about the opportunity to potentially relabel the drums. The EPA offered Atticus the following options: 1) Move the shipment under a CBP Permit-to-Transfer to a CBP-

bonded warehouse with an EPA producer establishment number where the relabel could take place; 2) Move the shipment under a Stop Sale, Use, or Removal Order (SSURO) issued by the EPA to an EPA-registered producer establishment.

19. On or around October 16, 2018, Atticus notified the EPA via email that the shipment had been discharged on or about October 16, 2018 from the Port of Unlading in Long Beach, California and was being shipped by rail, estimated to arrive at the Port of Atlanta on or around October 23, 2018.
20. On October 23, 2018, Atticus notified the EPA via email that it wanted to proceed under a SSURO.
21. On November 7, 2018, the EPA issued a SSURO to Atticus which prohibited further selling, distributing, using or removing the shipment of Bentazon 4 Herbicide, but also provided Atticus an opportunity to come into compliance by relabeling the drums of misbranded pesticide at an EPA-registered establishment. An amendment to the SSURO was issued on November 20, 2018, to correct the Docket number to FIFRA-04-2019-3254 from FIFRA-04-2018-3254.
22. On December 17, 2018, the EPA vacated the SSURO after verifying the pesticide product Bentazon 4 Herbicide had been properly relabeled and was in compliance with FIFRA.
23. The EPA alleges that by importing the misbranded pesticide as described above in paragraph 14, and further moving it from the Port of Long Beach to the Port of Atlanta, Atticus distributed a misbranded pesticide on two occasions, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

24. 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.
25. 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).
26. 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 **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500)** 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

27. 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.
28. 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.
29. 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.
30. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA as it relates to its products.
31. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in Section III of this CAFO and shall not otherwise affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal

sanctions for any violation of law. Compliance with this CAFO is not a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA, and it is the responsibility of Respondent to comply with FIFRA and other applicable federal, state and local laws and regulations.

32. 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

33. Respondent is assessed a civil penalty of **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
34. 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.

35. 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;

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

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

40. 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.

VI. Effective Date

41. 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: Atticus, LLC

Docket No.: FIFRA-04-2019-3019(b)

By: *Dave G Bolin* (Signature) Date: 5/6/2019

Name: Dave G Bolin (Typed or Printed)

Title: V.P. - Regulatory Affairs (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By: *Suzanne G Rubini* Date: 6/24/19

~~Carol L. Kemker~~ Suzanne G. Rubini
Acting Director
~~Air, Pesticides and Toxics Management Division~~
Enforcement Compliance and Assurance Division

APPROVED AND SO ORDERED this 26th day of June 2019.

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 Atticus, LLC, Docket Number: FIFRA-04-2019-3019(b), to the addressees listed below:

Ms. Amanda Rabby
Atticus, LLC
5000 CentreGreen Way, Suite 100
Carey, North Carolina 27513

(via Certified Mail, Return Receipt Requested)

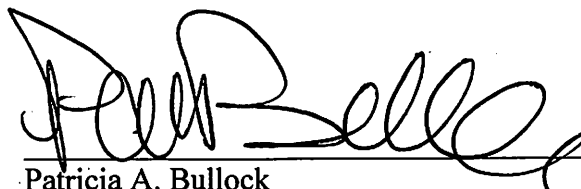
Kanoelehua Ho
Chemical Safety Section
Enforcement Compliance and Assurance Branch
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal mail)

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

(via EPA's internal mail)

Date: 6/26/19



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