



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 01 2015-

UNITED PARCEL SERVICE

Lisa Campbell, Esq.
Attorney at Law
Bergeson & Campbell, PC
2200 Pennsylvania Avenue, N.W.,
Suite 100W
Washington, D.C. 20037

Re: WELL Shield
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2015-3006(b)

Dear Ms. Campbell:

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 have your client to 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 your client on notice of its 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 black ink, appearing to read "Anthony G. Toney", written over a horizontal line.

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosures

cc: Dale Dubberly, FDACS
Nancy Hall, GDAS

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

In the Matter of:)
)
WELL Shield, LLC)
)
Respondent.)
)
)
)
)
)
_____)

Docket No.: FIFRA-04-2015-3006(b)

RECEIVED
MAY 11 2015
EPA REGION 4
ATLANTA, GEORGIA

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 WELL Shield, LLC (WELL Shield).
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 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
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960
(404) 562-8972.

5. Respondent WELL Shield is licensed to do business in the State of Florida and was formed in the State of Delaware.
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 August 17, 2010, an inspector authorized by the EPA inspected the EcoActive Surfaces, Inc. (EcoActive Surfaces), facility located at 555-D NE 27th St. Pompano Beach, Florida 33064. The inspector collected a documentary sample label of the "OxiTitan" product, as well as distribution and sales records.

8. Based on information collected during the EPA's investigation, it was determined that on or about December 23, 2013, the Respondent acquired the intellectual property rights to the product, "OxiTitan," and commenced selling and distributing the product.
9. On December 16-17, 2014, inspectors, duly appointed by the EPA Administrator, inspected the Respondent's current facility located at 101 North Federal Highway, Suite 600, Boca Raton, Florida 33432. The Respondent's former facility was located at NE 48th Street, Lighthouse Point, Florida 33064.
10. Pursuant to the EPA's show cause and information request letter dated March 22, 2015, the Respondent provided information that included approximately eighty-nine (89) invoices showing Respondent's sale and/or distribution of the product "OxiTitan."
11. The documentary sample label of "OxiTitan" collected by the EPA during the August 2010, inspection at the EcoActive Surfaces facility, contained claims for the control and mitigation of micro-organisms that pose a threat to human health including, but not limited to, disease transmitting bacteria or viruses. The affixed label explicitly made certain claims including, but not limited to, "OxiTitan provides an antimicrobial coating," "OxiTitan is anti-pathogenic" and "OxiTitan has been shown to reduce microbial contamination."
12. Upon information and belief, based on statements made by the Respondent during the show cause meeting held on June 23, 2015, at the time of the acquisition of the intellectual property rights to the product OxiTitan, the Respondent continued to use the same label that contained "pesticide claims" as described above in paragraph 11.
13. Based on the "pesticide claims" on the product's label above-referenced in paragraphs 11 and 12, the product "OxiTitan" was determined to be a "pesticide" as that term is 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.
14. 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).
 15. Based on the information gathered during the above-referenced inspections and the information submitted by the Respondent, the EPA determined that “OxiTitan” was being produced, distributed and/or sold by the Respondent as defined in Sections 2(w) and 2(gg) of FIFRA.
 16. The term “produce” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3, means in part, “to manufacture, prepare, compound, propagate any pesticide or active ingredient used in producing a pesticide,” or “to package, repackage, label, relabel or otherwise change the container of any pesticide or device.”
 17. 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.
 18. Pesticides that are distributed and/or sold in the United States are required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
 19. Based on the “pesticide claims” made on the product label for OxiTitan, as described above in paragraphs 11 and 12, the product is a pesticide. Further, at the time of the

inspections, the product “OxiTitan” was not registered as a pesticide with the EPA, as required by Section 3 of FIFRA, 7 U.S.C. § 136a.

20. Pursuant to 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.
21. As set forth in paragraph 10 above, on at least eighty-nine (89) separate occasions, the Respondent offered for distribution and/or sale the unregistered pesticide “OxiTitan,” in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
22. In response to the EPA’s show cause and information request letter above-referenced in paragraph 10, the Respondent submitted information identifying that the OxiTitan product was relabeled at its former establishment facility identified in paragraph 9. As referenced above in paragraph 16, pursuant to 40 C.F.R. § 167.3, the term “produce” also includes to relabel or otherwise change the container of any pesticide or device.
23. During the relevant time, the establishment above-referenced in paragraph 9, was not registered with the EPA.
24. The term “establishment” is defined at 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.
25. Pursuant to 40 C.F.R. § 167.20(3), any establishment where a pesticide is produced must be registered with the Agency.
26. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), no person shall produce any pesticide in any State unless the establishment in which it is produced is registered with the Administrator of the EPA.

27. It is unlawful for a producer to violate any of the provisions of Section 7(a) of FIFRA pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L).
28. Respondent produced the pesticide, “OxiTitan,” at its establishment above-referenced in paragraph 9, that was not registered with the EPA, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) and Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L).
29. According to the information submitted by the Respondent in response to the EPA’s show cause and information request letter, the Respondent received the unregistered pesticide, “OxiTitan,” from the establishment, TitanPE Technologies, Inc., located at 1st Floor, Building 7 No. 198 Changhe Road 200331, Shanghai, China.
30. Further, based on information submitted by the Respondent as referenced above, in paragraph 10, the EPA determined that on at least eleven (11) separate occasions, the Respondent failed to submit a Notice of Arrival (NOA) of Pesticides and Devices (also known as “EPA Form 3540-1”) to the EPA prior to the arrival of each of the shipments from the foreign establishment in China identified in paragraph 29, that accurately reported the product’s composition and nature.
31. 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 import pesticides into the United States is required to submit to the EPA Administrator a NOA, prior to the arrival of the shipment(s) into the United States.
32. It is unlawful under Section 12(a)(2)(N) of FIFRA, 7 U.S.C, § 136j(a)(2)(N), for a registrant, wholesaler, dealer, retailer, or other distributor to fail to file any reports required by FIFRA.

33. Respondent failed to file a NOA on at least eleven (11) separate occasions prior to the arrival of each shipment of the pesticide, in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).
34. 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.
35. 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).
36. 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 **TWO HUNDRED FIFTY THREE THOUSAND, SIX HUNDRED DOLLARS (\$253,600)** 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

37. 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.
38. 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.
39. 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.
40. 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 the product, "OxiTitan," or any

other pesticide products it produces, sells or distributes with the same formulation as "OxiTitan."

41. 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.
42. 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

43. Respondent is assessed a civil penalty of **TWO HUNDRED FIFTY THREE THOUSAND, SIX HUNDRED DOLLARS (\$253,600)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
44. 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.

45. 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
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960; and

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

46. 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.

47. 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.
48. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
49. This CAFO shall be binding upon the Respondent, its successors and assigns.
50. 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

51. 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: WELL Shield, LLC.

Docket No.: FIFRA-04-2015-3006(b)

By: PES (Signature) Date: 8/20/15

Name: PETER SCIALLA (Typed or Printed)

Title: MANAGER (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By: Beverly H. Banister (Signature) Date: 8/27/15
Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 31st day of August 2015.

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 WELL Shield, LLC, Docket Number: FIFRA-04-2015-3006(b), to the addressees listed below.

Lisa Campbell, Esq
Bergeson & Campbell, PC
2200 Pennsylvania Avenue, N.W.
Suite 100W
Washington, D.C. 20037

(via United Parcel Service)

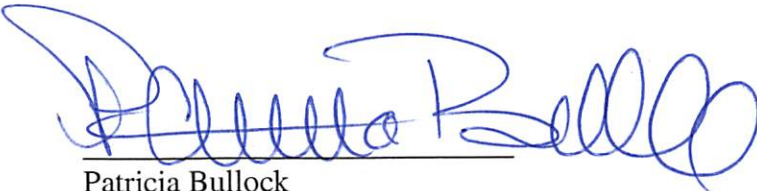
Ms. Marlene Tucker
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

Mr. Robert Caplan
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

9-1-15
DATE


Patricia Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-9511