



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

MAR 31 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dave Thomas
Helena Chemical Company
225 Schilling Boulevard, Suite 300
Collierville, Tennessee 38017

Re: Docket No.: FIFRA-04-2011-3015(b)
Helena Chemical Company

Dear Mr. Thomas:

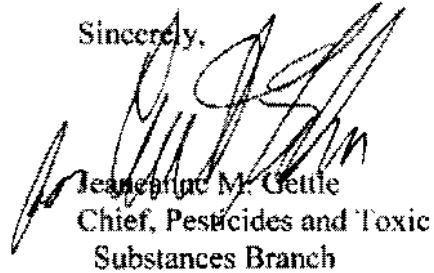
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

The Agency received the notice of payment dated March 14, 2011, in accordance with paragraph 28 of this CAFO. The payment of \$8,370 will be applied and, this matter will be concluded at that time.

Penalty payment questions should be directed to Mr. Bryson Lehman either by telephone at (513) 487-2123 or by written correspondence to his attention at the U.S. Environmental Protection Agency, Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Phillip Beard at (404) 562-9012.

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 (SEC) any environmental enforcement actions taken by EPA.

Sincerely,



Jeanette M. Gettle
Chief, Pesticides and Toxic
Substances Branch

Enclosures

cc: Kathy Booker, Administrator
TN Dept. of Agriculture
State File No. SN081112

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

RECEIVED
2011 MAR 31 PM 11:27
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Helena Chemical Company)
)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2011-3015(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) (hereinafter "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 (EPA). Respondent is Helena Chemical Company.
2. 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

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 1367(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14 dated May 11, 1994.
4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Phillip Beard
Pesticides Section
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012.

5. The Respondent is Helena Chemical Company located at 225 Schilling Boulevard, Collierville, Tennessee 38017.
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 June 6, 2008, an authorized representative of the EPA conducted an inspection at Wilmington Country Club, 425 Kennett Pike, Wilmington, Delaware 19807. During the aforementioned inspection, the inspector determined that “HM-9930”, an unregistered pesticide used for experimental purposes, was misbranded and had been distributed or sold by the Respondent.
8. The inspector obtained evidence documenting the distribution of the “HM-9930” product to Wilmington Country Club.

9. "HM-9930" 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.
10. 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).
11. 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.
12. Pursuant to 40 C.F.R. § 152.30(c)(2), an unregistered pesticide may be distributed or sold in accordance with the provisions of 40 C.F.R. § 172.3 (pertaining to use of a pesticide for which an experimental use permit is not required), provided that the product is labeled in accordance with 40 C.F.R. Part 156, *Labeling Requirements for Pesticides*. Pursuant to 40 C.F.R. § 156.10(a)(3), all required label or labeling text shall appear in the English language. At the time of the inspection, the label text of the "HM-9930" product was not in English.
13. According to FIFRA 2(q), 7 U.S.C. § 136(q), a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

14. As determined during the inspection, Respondent had distributed or sold "HM-9930" with a label that was not written in English. Therefore, Respondent distributed a misbranded pesticide.
15. Under 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.
16. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least three occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
17. 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.
18. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires 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.
19. 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 **EIGHT THOUSAND THREE HUNDRED SEVENTY DOLLARS (\$8,370)** 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

20. 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.

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

26. Respondent is assessed a civil penalty of **EIGHT THOUSAND THREE HUNDRED SEVENTY DOLLARS (\$8,370)** which shall be paid within 30 days from the effective date of this CAFO.
27. Respondent shall remit the penalty payment 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, MO 63197-9000.

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

28. 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;

Phillip Beard
Pesticides Section
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

and

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

29. 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.
30. Pursuant to 31 U.S.C. § 3717, 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 date of entry 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.

31. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
32. This CAFO shall be binding upon the Respondent, its successors and assigns.
33. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

The remainder of this page was intentionally left blank.

VI. Effective Date

34. 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: Helena Chemical Company
Docket No.: FIFRA-04-2011-3015(b)

By: *Dave Thomas* (Signature) Date: 3/9/11
Name: Dave Thomas (Typed or Printed)
Title: VP, Marketing (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: *Carol G. Kimberlin* Date: 3/28/11
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 31st day of March 2011.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

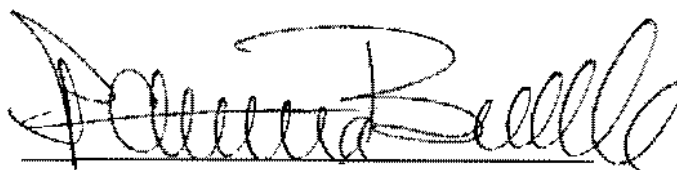
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Helena Chemical Company, Docket Number: FIFRA-04-2011-3015(b), to the addressees listed below.

Mr. Dave Thomas (via Certified Mail, Return Receipt Requested)
Helena Chemical Company
225 Schilling Boulevard, Suite 300
Collierville, Tennessee 38017

Phillip Beard (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)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Date: 3/31/11



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 3/24/11
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Helena Chemical Company
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 8,370
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIKA 04 3015 (6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|--|---|
| 1. Originating Office
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|