



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 19 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Burl M. Finkelstein
Vice President
Kason Industries, Inc.
57 Amlajack Boulevard
Shenandoah, Georgia 30265

Re: Kason Industries, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2012-3012(b)

Dear Mr. Finkelstein:

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 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 Ms. Patricia Livingston of the EPA Region 4 staff at (404) 562-9171.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle".

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

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

In the Matter of:)
)
Kason Industries, Inc.)
)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2012-382(b)

**RECEIVED
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2012 JUN 19 AM 7:30
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. § 136/(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 Kason Industries, Inc., 57 Amlajack Boulevard, Shenandoah, Georgia, 30265.
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136/(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. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by 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 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 EPA in this proceeding:

Patricia Livingston
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9171.

5. Respondent is Kason Industries, Inc., a Georgia corporation, located at 57 Amlajack Boulevard, Shenandoah, Georgia, 30265.
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 December 3, 2009, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 57 Amlajack Boulevard, Shenandoah, Georgia.

8. At the time of the inspection, the inspector determined that Kason Industries, Inc. was manufacturing and distributing food service hardware products with “PathoGuard.”
9. Kason’s internet advertisements for its food service hardware products with PathoGuard made claims that, “PathoGuard suppresses the growth of a wide variety of bacteria, algae, mold and mildew, including E. coli, staph and salmonella, for the life of the product,” “Reduces the spread of pathogens – including E. coli, staph and salmonella,” and “PathoGuard can retard growth of these bacteria and fungi.” These are considered to be pesticidal claims.
10. Kason’s food service hardware products with PathoGuard are considered to be pesticides 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, Kason's food service hardware products with PathoGuard were not registered as pesticides with 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), 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, Kason was producing the aforementioned pesticides in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment.
18. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful to produce a pesticide in any State unless the establishment is registered with the Administrator of EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e.
19. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) and is therefore subject to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l.
20. 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.
21. 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.

22. 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 **THIRTEEN THOUSAND SEVEN HUNDRED AND TWENTY-EIGHT DOLLARS (\$13,728)** 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

23. 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.
24. 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.
25. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
26. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
27. 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.
28. 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

HUNDRED AND TWENTY-EIGHT DOLLARS (\$13,728) which shall be paid within 30 days from the effective date of this CAFO.

30. 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.

31. 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;

Patricia Livingston
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.

32. 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.
33. 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 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.
34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. 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.

The remainder of this page intentionally left blank.

36. 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: Kason Industries, Inc.
Docket No.: FIFRA-04-2012-3012(b)

By: Burt M Finkelstein (Signature) Date: 5/15/12

Name: Burt M Finkelstein (Typed or Printed)

Title: Exec VP and GC. (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Douglas Neelley for Date: 6/7/12
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 18th day of June 2012.

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 Kason Industries, Inc., Docket Number: FIFRA-04-2012-3012(b), to the addressees listed below:

Mr. Burl M. Finkelstein
Vice President
Kason Industries, Inc.
57 Amlajack Boulevard
Shenandoah, Georgia 30265

(via Certified Mail, Return Receipt Requested)

Patricia Livingston
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 Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(via EPA's internal mail)

Date: 6-19-12



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