



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

JUN 14 2007

4APT-PTSB

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Hank Harms
Chief Executive Officer
Harmsco Inc.
7169 49th Terrace N.
West Palm Beach, FL 33407

SUBJ: Docket No. FIFRA-04-2007-3014(b)
Harmsco Inc.

Dear Mr. Harms:

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 CFR Part 22.

Please make note of the provisions in Section IV of the Final Order, with respect to payment of the assessed penalty of \$11,700, which is due within 30 days from the effective date of the CAFO. If paying by cashier's or certified check, we request that the payment be identified by writing the company name and docket number on the face of the check.

Also enclosed is a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." 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 the EPA. Please note that the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. EPA, Cincinnati Accounting Operations address identified in Section 35 of the CAFO. Should you have any questions about your compliance status in the future, please call me or Ms. Patricia Livingston at (404) 562-9171.

Sincerely,



Joanne Benante
Chief
Pesticides and Toxic
Substances Branch

Enclosures (2)

cc: Craig Bryant, Environmental Manager
Florida Department of Agriculture
& Consumer Services (FLDACS)


II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(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 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Patricia Livingston
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9171.
5. Respondent is Harmsco Inc., a Florida corporation, located at 7169 49th Terrace North, West Palm Beach, Florida 33407.
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. On or about December 23, 2005, an authorized representative of the EPA conducted an inspection at the Harmsco Inc. facility located at 7169 49th Terrace North, West Palm Beach, Florida 33407.
8. During the aforementioned inspection, the product "Harmsco ® SureSafe™ Filter Cartridge" was identified as being produced and distributed by the Respondent.
9. At the time of the aforementioned inspection, Harmsco ® SureSafe™ Filter Cartridge was offered for sale.
10. 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.

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05-31-07

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. Pursuant to Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1), the Administrator has declared by regulation currently codified at 40 C.F.R. § 152.5(d) that all fungus, bacterium, virus or other microorganisms, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCa sec. 201(g)(1)) and cosmetics (as defined in FFDCa sec. 201(i)) are pests.
13. Pursuant to Section 25(b)(2) of FIFRA, 7 U.S.C. § 136w(b)(2), the Administrator has declared by regulation currently codified at 40 C.F.R. § 152.25(a) that articles or substances treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), are pesticides that are of a character not requiring regulation under FIFRA, and are therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified as long as the pesticide is registered for such use. Hereinafter, this exemption is referred to as the Treated Article Exemption.


05-31-07

14. The Administrator has issued guidance dated March 6, 2007, known as Pesticide Registration (PR) Notice 2000-1, regarding the Applicability of the Treated Article Exemption to Antimicrobial Pesticides. The Administrator maintains in the PR Notice that the Treated Article Exemption does not include articles or substances bearing implied or explicit public health claims against human pathogens.
15. The filter media in the Harmsco ® SureSafe™ Filter Cartridge contains an EPA registered antimicrobial, Zeomic® Type AJ10D Silver Zeolite A, EPA Registration No. 71227-1. Silver Zeolite A is approved as a preservative and bacteriostatic agent in polymers, plastics and latex products, including those that have contact with food and drinking water.
16. At the time of the aforementioned inspection, Respondent distributed literature regarding the Harmsco ® SureSafe™ Filter Cartridge which described the use of Silver Zeolite technology in the cartridge “to inhibit harmful growth of bacteria, fungi and mold.”
17. Complainant maintains that since this reference to inhibiting harmful growth of bacteria, fungi and mold is not explicitly restricted to inhibiting such growth “on the cartridge” it is an implicit public health claim which makes the product ineligible for the Treated Article Exemption.
18. Since the claims made for the Harmsco ® SureSafe™ Filter Cartridge are not eligible for the Treated Article Exemption, the statutory consequence is that Respondent “distributes or sells” pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), which

J.H.
05-31-07

defines the term "to distribute or sell" as to distribute, sell, offer for sale, hold for distribution, hold shipment, or receive and (having so received) deliver or offer to deliver.

19. At the time of the inspection, the Harmsco ® SureSafe™ Filter Cartridge was not registered as a pesticide with EPA.
20. It is unlawful according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), 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. 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.
22. At the time of the inspection, Respondent produced the pesticide Harmsco ® SureSafe™ Filter Cartridge in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment.
23. As set forth in Section 12(a)(1)(L) of FIFRA, 7 U.S.C. § 136j(a)(1)(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.
24. Respondent violated Section 12(a)(1)(L) of FIFRA, 7 U.S.C. § 136j(a)(1)(L), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
25. 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.

J.H.
05-31-07

26. 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.
27. 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 ELEVEN THOUSAND SEVEN HUNDRED DOLLARS (\$11,700.00) 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.

III. Consent Agreement

28. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
29. 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.
30. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
31. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA with respect to the Harmsco ® SureSafe™ Filter Cartridge by adding "on the cartridge" to references to the inhibition of bacteria, mold and mildew, thereby reestablishing the applicability of the Treated Article Exemption.

J.P.
05-31-07

32. 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.
33. 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.

IV. Final Order

34. **Respondent is assessed a civil penalty of ELEVEN THOUSAND SEVEN HUNDRED DOLLARS (\$11,700.00) which shall be paid within 30 days from the effective date of this CAFO.**
35. 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
Cincinnati Accounting Operations
Mellon Lock Box 371099M
Pittsburgh, PA 15251-7099

The check shall reference the name and the Docket Number of the CAFO

["Harmsco Inc., FIFRA-04-2007-3014(b)"].

J.H.A.
05-31-07

36. 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;

Patricia Livingston
Pesticides Management 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.

37. 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.
38. 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.

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05-31-07

In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.

39. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
40. This CAFO shall be binding upon the Respondent, its successors and assigns.
41. 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.

Remainder of this page left intentionally blank.

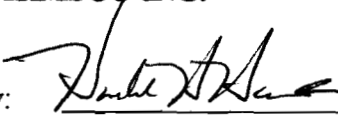
Handwritten initials and date: 7/11/07
05-31-07

V. Effective Date

37. 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:

HARMSCO INC.

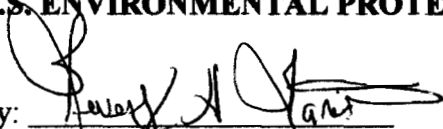
By:  (Signature)

Date: 05-31-07

Name: Harold H. Harms (Typed or Printed)

Title: C.E.O. (Typed or Printed)

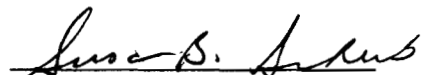
U.S. ENVIRONMENTAL PROTECTION AGENCY

By: 

Date: 6/12/07

Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 13th day of June, 2007.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Harmsco Inc., FIFRA Docket No. 04-2007-3014(b), on the parties listed below in the manner indicated.

For Complainant:

Patricia Livingston
Pesticides Management Section
U.S. EPA - Region 4, 4APT-PTSB
61 Forsyth Street
Atlanta, GA 30303-8960.

(Via EPA' s internal mail)

Nancy Tommelleo
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, GA 30303-8960.

(Via EPA' s internal mail)

For Respondent:

Harold H. Harms
Chief Executive Officer
Harmsco Inc.
7169 49th Terrace N.
West Palm Beach, FL 33407.

(Via Certified Mail - Return Receipt
Requested)

Date:

6-14-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960
(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 _____ (Date)
(Name)

in the DEA, OATGL at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: HarmSCO Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 11,700
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA of 2007 3014(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial P

DISTRIBUTION:

- A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page 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. _____ | 3. _____ |
|--|----------|----------|
- B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the
- | | |
|---------------------------|-----------------|
| 1. Originating Office | 3. Designated F |
| 2. Regional Hearing Clerk | 4. Regional Co |

OFFICIAL USE

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CERTIFIED MAIL™ RECEIPT

U.S. Postal Service™

Sent To: Mr. Hank Harms
Chief Executive Officer
HarmSCO Inc
169 49th Terrace N.
West Palm Beach, FL 33407

City, State or PO Box, Street Address

Postage \$	Total Postage
Certified Fee	Return Receipt Fee (Endorsement Required)
Return Receipt Fee (Endorsement Required)	Restricted Delivery Fee (Endorsement Required)

Postmark Here