

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

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HEARING CLERK

IN THE MATTER OF:)
)
) CIVIL COMPLAINT
) and
 Spring Lake Gardens, Inc.) NOTICE OF OPPORTUNITY
) FOR HEARING
)
) Docket No. FIFRA-04-2009-3027
)
 Respondent.)
_____)

I. CIVIL COMPLAINT

A. Jurisdiction

1. This is a civil administrative complaint issued under the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (hereinafter "FIFRA").
2. The Complainant, the Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is authorized by the United States Environmental Protection Agency (hereinafter "EPA") Administrator and the EPA Regional Administrator for Region 4, to issue a complaint on behalf of the Agency to persons alleged to be in violation of FIFRA.

3. The Respondent is Spring Lake Gardens, Inc. (hereinafter “Spring Lake Gardens” or “Respondent”), located at 33463 Old Salisbury Road, Albemarle, North Carolina 28001.

4. This complaint serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

B. Statement of Facts

5. Respondent is incorporated in the state of North Carolina.

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. Respondent is an “establishment” as defined by Section 2(dd), which primarily engages in the sale of plants and garden supply products, and as such is subject to the provisions of FIFRA and the regulations promulgated thereunder.

C. Alleged Violations

COUNT 1

8. Complainant incorporates the provisions described in paragraphs 1 through 7 by reference.

9. On or about May 30, 2006, an inspector, duly appointed by the EPA Administrator, conducted an inspection at Spring Lake Gardens, Inc., located at 33463 Old Salisbury Road, Albemarle, North Carolina 28001.

10. During the May 30, 2006, inspection, the inspector identified the following product as being offered for sale by Spring Lake Gardens: “Vereen’s 18-5-9 w/.86% Pendimethalin 25% PSCU.”

11. The inspector obtained evidence documenting the shipment of the “Vereen’s 18-5-9 w/.86% Pendimethalin 25% PSCU” sold to Spring Lake Gardens as indicated on invoice number 40111 dated March 13, 2006.
12. The “Vereen’s 18-5-9 w/.86% Pendimethalin 25% PSCU” is a “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that it is a substance or mixtures of substances intended for preventing, destroying, repelling, or mitigating a pest.
13. 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 micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 136w(c)(1).
14. Respondent “distributes or sells” pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
15. At the time of the inspection, the “Vereen’s 18-5-9 w/.86% Pendimethalin 25% PSCU” being distributed by the Respondent was not registered with the EPA.
16. According to FIFRA Section 12(a)(1)(A), it is unlawful for any person in any state to distribute or sell to any person a pesticide that is not registered.
17. Therefore, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least one occasion.

D. Proposed Penalty

18. Section 14 of FIFRA, 7 U.S.C. § 136l, in conjunction with the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701, and the regulations promulgated at 40 C.F.R. Part 19, authorizes the issuance of this Complaint for the assessment of a

civil penalty of not more than \$6,500. EPA proposes to assess a civil penalty against the Respondent of \$4,600 for the above described violation as set forth in Count 1.

E. Appropriateness of Proposed Penalty

19. The proposed penalty has been derived in accordance with the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (“Policy”) for the violations cited for a Category I Respondent and in accordance with the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Inflation Adjustment Rule, 61 Fed. Reg. 69,360 (December 31, 1996), which provide for a 10% increase in the statutory maximum for violations of federal statutes after January 31, 1997, and a subsequent increase of 10% for violations occurring after March 15, 2004, 69 Fed. Reg. 7121 (February 13, 2004) and before January 12, 2009.
20. Respondent was placed in Category I, total business revenues over \$1,000,000. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating that another category is appropriate. As set forth in the Policy and Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), in determining the amount of the penalty, Complainant must take into consideration the size of Respondent’s business, the effect on the Respondent’s ability to continue in business, and the gravity of the violation.
21. Complainant will consider Respondent’s financial condition in mitigating the proposed penalty, insofar as is necessary to permit Respondent to continue in business. In order to have its financial condition considered, Respondent must submit certified financial information, to include but may not be limited to, the last three years of corporate tax returns.

information, to include but may not be limited to, the last three years of corporate tax returns.

II. NOTICE OF OPPORTUNITY FOR HEARING

A. Answer and Request for Hearing

22. The “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, as amended,” 40 C.F.R. Part 22 (Consolidated Rules) govern the procedures of the hearing. A copy of the Consolidated Rules accompanies this Complaint. Under these rules, you have the right to request a formal hearing to contest any material fact set forth in this Complaint and/or to contest the appropriateness of proposed penalty.

You must file a written Answer within 30 days of your receipt of this Complaint (unless a Consent Agreement and Final Order resolving this matter is filed within the 30 days) to avoid being found in default. Default constitutes an admission by you of all facts alleged in the Complaint, waives your right to a hearing, and results in having the above-cited penalty assessed without further proceedings.

23. Your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which you have knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of allegation. Your Answer must also briefly state all facts and circumstances, if any, which constitute grounds for a defense and specifically request an administrative hearing (if desired). If you deny any material fact

or raise any affirmative defense, you will be considered to have requested a hearing.

Your written Answer to the Complaint should be sent to:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
Telephone: (404) 562-9511.

A copy of the Answer should also be sent to:

Marlene Tucker
Associate Regional Counsel
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Phillip Beard
Case Development Officer
U.S. EPA, Region 4
Pesticides & Toxic Substances Branch
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960.

B. Informal Settlement Conference

24. Whether or not you request a hearing, you may confer informally with Marlene Tucker at (404) 562-9536, to discuss the facts of this case, the amount of the proposed penalty, or the possibility of a settlement. An informal settlement conference does not, however, affect your obligation to file a written Answer to the Complaint.
25. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with you in an informal settlement conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order (CAFO). A CAFO signed by EPA and the Respondent would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Administrator.
26. Please be advised that after the Complaint is issued, pursuant to Section 22.8 of the Consolidated Rules, any *ex parte* discussion of the merits of any action with the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer,

Presiding Officer, or any person likely to advise these officials in the decision of the case is prohibited. *Ex Parte* discussion as used herein means communicating to any of the above officials by one party to a proceeding without notice to and in the absence of the other party.

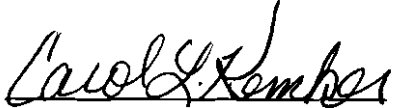
C. Payment of Penalty

27. If Respondent chooses not to contest any of the allegations set forth in this Complaint, by filing a written Answer within 30 days of receipt of the Complaint, an authorized official should sign and submit an Affidavit of Compliance (in lieu of an Answer) that the violations have been corrected and pay the proposed penalty via cashier's or certified check. The Affidavit of Compliance should be sent to the Regional Hearing Clerk, EPA, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303-8960. The check must be payable to the "Treasurer, United States of America" and sent to the following banking address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

The check shall reference on its face the Docket Number (FIFRA-04-2009-3027).

5/29/09
Date


Carol L. Kemker, Acting Director
Air, Pesticides and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

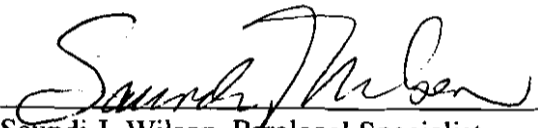
I hereby certify that I have this day served a true and correct copy of the foregoing Civil Complaint and Notice of Opportunity for Hearing In the Matter of: Spring Lake Gardens, Inc., Docket Number: FIFRA-04-2009-3027, on the parties listed in the manner indicated.

Phillip Beard (via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides, and Toxics Management Division
61 Forsyth Street, SW
Atlanta, GA 30303

Marlene Tucker (via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, SW
Atlanta, GA 30303

Mr. Timothy Lowder (via Certified Mail – Return Receipt Requested)
Spring Lake Gardens, Inc.
33463 Old Salisbury Road
Albemarle, NC 28001

Date: 6/4/09


Saundi J. Wilson, Paralegal Specialist
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303