

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:) Docket No. **FIFRA-04-2007-3017**
)
Jack's Magic Products, Inc.) **CIVIL COMPLAINT**
) **NOTICE OF**
Respondent.) **OPPORTUNITY FOR HEARING**

2007 JUN 25 AM 11:22
HEARINGS CLERK
EPA REGION 4

I. CIVIL COMPLAINT

A. Jurisdiction

1. This is a civil administrative complaint issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136 *et seq.* (hereinafter "FIFRA").
2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Jack's Magic Products, Inc. (hereinafter "Respondent") violated Section 12 of FIFRA, 7 U.S.C. § 136j.
3. The Complainant, the Director of the Air, Pesticides and Toxics Management Division, EPA, Region 4, is authorized by the Administrator of EPA and by the Regional Administrator of EPA, Region 4, to issue a complaint on behalf of the Agency to persons alleged to be in violation of FIFRA.
4. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding. A copy of the answer and other documents that Respondent files in this action should be sent to the following individual:

Marlene J. Tucker
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9536.

5. Respondent is incorporated in the State of Florida.
6. Respondent owns and operates a business that manufactures bleaching solutions for pools at its facility located at 12435 73rd Court, Largo, Florida 33773.
7. 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.
8. Respondent is a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 CFR. § 167.3 and 40 CFR. § 169.1.

B. Statement of Facts and Violations

COUNTS 1 - 5

9. Complainant repeats the allegations set forth in paragraphs 1 through 8 above.
10. On or about February 7, 2006, an inspector, duly appointed by the EPA Administrator, conducted an inspection at Jack's Magic Products, Inc., formerly located at 6950 112th Circle, Largo, Florida 33773.
11. Respondent is currently located at 12435 73rd Court, Largo, FL 33773.
12. During the February 7, 2006 inspection, the inspector identified the following products as being offered for sale by Jack's Magic Products: "Formula Three" and "the All Fixedup Stuff."
13. The inspector obtained evidence documenting the following five shipments of the "Formula Three Product" that were sold as part of the "Jack in a Box Kit" :

Invoice no.22594 dated May 2, 2005;
Invoice no. 23175 dated May 31, 2005;
Invoice no. 23458 dated June 16, 2005;
Invoice no. 24269 dated July 28, 2005; and
Invoice no. 25917 dated January 13, 2006.

14. The Formula Three Product 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.
15. 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 25(c)(1).
16. Furthermore, the Formula Three Product is an antimicrobial pesticide as defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), in that an antimicrobial pesticide is a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.
17. Respondent "distributes or sells" pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
18. At the time of the inspection, the Formula Three Product being distributed by the Respondent was not registered with the EPA.
19. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person a pesticide that is not registered.

20. Therefore, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), at least five separate times based on the five individual shipments of the Formula Three product identified above, in Paragraph 13.

COUNTS 5-9

21. Complainant repeats the allegations set forth in Paragraphs 1 through 8, and 9 through 13 above.
22. During the February 7, 2006, inspection, the inspector obtained evidence documenting the following four shipments of “the All Fixedup Stuff” product:
- Invoice no. 23445 dated June 15, 2005;
Invoice no. 24191 dated July 22, 2005;
Invoice no. 24404 dated August 05, 2005; and
Invoice no. 25932 dated January 17, 2006.
23. The All Fixedup Stuff product 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.
24. 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 25(c)(1).
25. Furthermore, “the All Fixedup Stuff” product is an antimicrobial pesticide as defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), in that an antimicrobial pesticide is a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.

26. Respondent "distributes or sells" pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
27. At the time of the inspection, "the All Fixedup Stuff" product being distributed by the Respondent was not registered with the EPA.
28. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person a pesticide that is not registered.
29. Therefore, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), at least four times based on the four individual shipments of "the All Fixedup Stuff" product identified above, in Paragraph 22.

C. Proposed Penalty

Section 14 of FIFRA, 7 U.S.C. § 136l, in conjunction with the Civil Monetary Inflation Adjustment Rule, 40 CFR Part 19, authorizes EPA to assess a civil penalty of not more than \$6,500 for each offense that occurs on or after January 31, 1997. The EPA proposes to assess a total civil penalty of \$40,950 against the Respondent for the above-described violations as set forth below:

Counts 1-5:	\$ 22,750
Counts 6-9:	\$ 18,200

D. Appropriateness of Proposed Penalty

The proposed penalty has been derived in accordance with the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for a Category I Respondent committing the violations cited above. A copy of the Enforcement Response Policy is enclosed. Respondent was placed in Category I (total business revenues of greater than \$1,000,000 per year). If this categorization is incorrect, the proposed penalty will be

adjusted upon submittal of reliable financial information indicating another category is appropriate.

As set forth in the Response 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 the Respondent's business, the effect on the Respondent's ability to continue in business, and the gravity of the violation. 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.

II. NOTICE OF OPPORTUNITY FOR HEARING

A. Answer and Request for Hearing

The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 CFR 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 the proposed penalty.

You must file a written Answer within 30 days of your receipt of this Complaint 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.

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 deny an allegation constitutes an admission. 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
Atlanta, Georgia 30303
Telephone: (404) 562-9511.

A copy of the Answer and other documents that Respondent files in this action should be sent to the following individual who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Marlene J. Tucker
Associate Regional Counsel
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, Georgia 30303
Telephone: (404) 562-9536.

B. Informal Settlement Conference

Whether or not you request a hearing, you may confer informally with Ms. Marlene J. Tucker in EPA's Office of Environmental Accountability, at (404)562-9536, to discuss the facts of this case, the amount of the proposed penalty, or the possibility of settlement.

An informal settlement conference does not, however, affect your obligation to file a written Answer to the Complaint.

EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with you in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by EPA and yourself would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Judicial Officer.

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

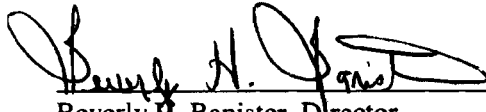
If Respondent chooses not to contest any of the allegations set forth in this Complaint by filing a written Answer, an authorized official of Respondent should sign and submit an Affidavit of Compliance (in lieu of an Answer) within 30 days stating that the violations have been corrected and pay the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

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lock Box 371099M
Pittsburgh, PA 15251-7099.

Your check must include on its face the docket number and the Respondent's name as stated on page one of this Complaint.

JUN 24 2001

Date



Beverly H. Banister, Director
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9077