



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 27 2012

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7672 1103

Mr. Sloane A. Wildman
Perkins Coie
700 Thirteenth St. N.W., Suite 600
Washington, D.C. 20005-3960

Consent Agreement and Final Order Commencing and Concluding
The Proceeding Preliminary Statement PetSmart, Inc. Docket No. FIFRA-05-2012-0007

Dear Mr. Wildman:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on March 27, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$156,000.00 is to be paid in the manner described in paragraphs 28 and 29. Please be certain that the number **BD 2751245P006** and the docket number are written on both the transmittal letter and on the check. Payment is due by April 26, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Calvo".

Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
PetSmart, Inc.)
Phoenix, Arizona 85027,)
)
Respondent.)
_____)
)

Docket No. FIFRA-05-2012-0007

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.

3. The Respondent is PetSmart, Inc., a corporation incorporated in the state of Delaware and doing business in the state of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is in compliance with the alleged violations at issue in this CAFO.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. The term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

12. The term “distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” 7 U.S.C. § 136(gg).

13. A “pesticide” is, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u).

14. A “pest” is “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 ... which the Administrator of EPA declares to be a pest" under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

15. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

16. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA, of up to \$6,500 for each offense under Section 14(a) of FIFRA, that occurred after March 15, 2004 through January 12, 2009. 7 U.S.C. § 136l(a), 40 C.F.R. Part 19 (2011).

Factual Allegations and Alleged Violations

17. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. On December 26, 2007, the Ohio Department of Agriculture (ODA) conducted an inspection at Respondent's retail establishment located at 263 Midway Boulevard, Elyria, Ohio 44035. Based on the evidence collected during that inspection and submitted to the EPA under Section 23(a)(1) of FIFRA, 7 U.S.C. § 136u(a)(1), Respondent has distributed or sold an unregistered pesticide product.

19. During the December 26, 2007, inspection, the ODA inspector observed the pesticide product, "**Purina Tidy Cats Scoop for Multiple Cats,**" being offered for distribution or sale.

20. During the December 26, 2007, inspection, the ODA inspector collected photographic evidentiary samples of the pesticide product, "**Purina Tidy Cats Scoop for Multiple Cats.**"

21. The product, "**Purina Tidy Cats Scoop for Multiple Cats,**" contains pesticidal claims on its labeling.

22. The following pesticidal claims are made on the product's label:

- "**Antimicrobial Odor Control**"
- "**...inhibits the growth of odor-causing bacteria**"
- "**...with deodorizing system and odor-causing bacteria growth inhibitor.**"

23. The claims identified in paragraph 22 indicate that the product is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.

24. The pesticide product identified in paragraph 21 above is an "antimicrobial pesticide" as defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm) and 40 C.F.R. § 152.15 et al.

25. The pesticide product identified in paragraph 21 is not registered, as required under Section 3 of FIFRA, 7 U.S.C. § 136a.

26. Respondent's distribution or sale of an unregistered pesticide product manufactured by a third party constitutes an unlawful act according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

27. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant

determined that an appropriate civil penalty to settle this action is \$156,000.00. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, that the Respondent allegedly distributed or sold an unregistered pesticide product fifty-two (52) times and the gravity of the alleged violation. Complainant also considered EPA's "*Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*," dated December 2009.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$156,000.00 civil penalty for the alleged FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197

for checks sent by express mail to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check must note the following: the case name, the docket number of this CAFO and the billing document number (BD number). To pay by electronic funds transfer, funds should be payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO, and the BD number. To pay by Automated Clearinghouse (ACH) (also known as REX or remittance express), ACH electronic funds transfer should be payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the ACH electronic funds transfer, state the case name, the docket number of this CAFO, and the BD number. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

29. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of any check and the transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Estrella Calvo (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Jose C. de Leon (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

30. This civil penalty is not deductible for federal tax purposes.

31. If Respondent does not pay the civil penalty within the time frame specified in Paragraph 28 herein, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

33. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

34. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive any of Respondent's rights or defenses in any such proceedings.

35. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws, and regulations.

36. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

37. The terms of this CAFO bind Respondent, its successors, and assigns.

38. Each person signing this agreement certifies that he or she has the authority to sign this agreement for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and attorneys fees in this action.

40. This CAFO constitutes the entire agreement between the parties.

41. The effective date of this CAFO is the date the Complainant files it with the Regional Hearing Clerk.

[SIGNATURES ON NEXT PAGE]

PetSmart, Inc., Respondent

3-12-2012
Date

By: Fred De Beak, VP/Deputy Gen Counsel
PetSmart, Inc.

U. S. Environmental Protection Agency, Complainant

03/23/12
Date

Josi A. Casanova
For Margaret Guerriero
Director
Land and Chemicals Division

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PROTECTION AGENCY

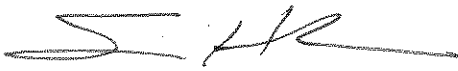
In the Matter of:

PetSmart, Inc.
Docket No. FIFRA-05-2012-0007

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-26-12
Date



Susan Hedman
Regional Administrator
U. S. Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in the resolution of the civil administrative action involving PetSmart, Inc., was filed on March 27, 2012 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7672 1103, a copy of the original to the Respondent:

Mr. Sloane A. Wildman
Perkins Coie
700 Thirteenth St. N.W., Suite 600
Washington, D.C. 20005-3960

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MAR 27 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jose C. de Leon, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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