



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 26 2013

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Manuel Lopez, President
Caribbean Corp.
209 Redneck Ave
Suite #4
Little Ferry, NJ 07643

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2013 MAR 27 A 11:53
REGIONAL HEARING
CLERK

**Re: In the Matter of Caribbean Corp.
Docket No. FIFRA-02-2013-5108**

Dear Mr. Lopez:

Enclosed is the Complaint and Notice of Opportunity for Hearing and supporting documents, in the above-referenced proceeding. This Complaint alleges violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer, within *thirty (30) days* of your receipt of the enclosed Complaint, to the United States Environmental Protection Agency (EPA) Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you, and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issues relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of a settlement by participating in an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say

in a written Answer, or extend the thirty (30) days by which you must file an Answer to request a hearing.

Enclosed are copies of the Consolidated Rules of Practice, which govern this proceeding. For your general information and use, I also have enclosed both an Information Sheet for U.S. EPA Small Business Resources and a Notice of Security and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings, which may or may not apply to you.

The EPA encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of any settlement. I am enclosing a brochure on EPA's SEP Policy. Please note that SEPs are only available as part of a negotiated settlement and will not be available if this case is resolved by formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X
In the Matter of :
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Caribbean Corp. :
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Respondent. :
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 :
Proceeding Under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended. :
-----X

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

Docket No. FIFRA-02-2013-5108

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 MAR 27 A 11: 53
REGIONAL HEARING
CLERK

1. This Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or the “Act”), as amended, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits (“Consolidated Rules of Practice” or “CROP”), 40 C.F.R. Part 22.
2. The Complainant, Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (“EPA”), has been duly delegated the authority to institute this action.
3. Respondent is Caribbean Corp. (hereinafter alternatively referred to as “Respondent”).
4. Respondent is a for-profit corporation operating in the State of New Jersey
5. Respondent has been, and continues to be, a “person” as defined by FIFRA Section 2(s), 7 U.S.C. Section 136(s), and is subject to FIFRA and the regulations promulgated thereunder.
6. Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
7. Respondent is a “wholesaler”, “dealer”, “retailer,” or “other distributor” within the meaning of Section 14(a) (1) of FIFRA, 7 U.S.C. §136l(a) (1).
8. Respondent owns and/or operates a facility located at 209 Redneck Avenue, Little Ferry, New Jersey (“the facility”).
9. Respondent’s facility constitutes an “establishment”, as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

10. From its facility, Respondent is a wholesale distributor of groceries and a variety of household goods, including pest control products.
11. Section 2(mm) of FIFRA, 7 U.S.C. Section 136(mm) defines the term “antimicrobial pesticide” as, among other things, “a pesticide that (A) is intended to- (i) disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.”
12. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “(1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.”
13. Respondent has distributed or sold the product “Fabuloso,” a liquid cleaner (hereinafter “Fabuloso”).
14. There are four types of Fabuloso products with various scents, including “Fresca Amanecer” (English Translation: “Fresh Dawn”); “Energia Naranja” (English Translation: “Orange Energy”); “Pasion de frutas” (English Translation: “Passion Fruit”); and “Mar Fresco” (English Translation: “Fresh Sea”).
15. The Fabuloso product is a pesticide by virtue of antibacterial claims (Antibacterial Freshness, Kills 99.99 of bacteria) on its label.
16. The Fabuloso product is manufactured in Mexico.
17. Respondent has distributed or sold the product “Clorox,” a liquid bleach.
18. The Clorox product is a pesticide by virtue of a disinfectant claim on its label.
19. The Clorox product is manufactured in Mexico.
20. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, pesticides intended for distribution or sale must be registered with EPA.
21. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. Section 136(q)(1)(E) states that a pesticide is misbranded if any word, statement or other information required to appear on the label is not likely to be read or understood by the ordinary individual under customary conditions of purchase and use.
22. Section 2(q)(2)(A) of FIFRA, 7 U.S.C. Section 136(q)(2)(A) states that a pesticide is misbranded if the label does not bear an ingredient statement.
23. Section 2(n) (1) of FIFRA, 7 U.S.C. § 136(n)(1), defines the term “ingredient statement” to include the name and percentage of each active ingredient, and the total percentage of all inert ingredients on the label.

24. 40 C.F.R. Section 156.10(a)(1) (contents of the label) states that all pesticide products shall bear a label containing the following information: the name of the product, name and address of producer or registrant or person for whom the product was produced, net weight or measure of contents, product registration number, producer establishment number, ingredient statement, hazard and precautionary statement, directions for use and use classification.

25. 40 C.F.R. Section 156.10(a)(3) (Language to be used) states that all pesticide products shall bear all required labeling text in the English language.

26. Under authority of Sections 8 and 9 of FIFRA, 7 U.S.C. Sections 136f and 136g, duly authorized EPA inspectors on April 26, 2012 conducted an inspection at the Jor Dar distributor facility, located at 1455 46th Street, North Bergen, New Jersey.

27. Under authority of Sections 8 and 9 of FIFRA, 7 U.S.C. Sections 136f and 136g, duly authorized EPA inspectors conducted on May 2, 2012 an inspection at the Caribbean Corp. warehouse (ie., the Respondent's facility), located at 209 Redneck Avenue, Little Ferry, New Jersey.

28. Under authority of Sections 8 and 9 of FIFRA, 7 U.S.C. Sections 136f and 136g, duly authorized EPA inspectors on May 9, 2012 conducted an inspection at the Quality Wholesale Distributors LLC ("Quality Wholesale") warehouse, located at 138B 3rd Avenue, Paterson, New Jersey.

Import of Pesticides Without Notices of Arrival
Counts 1 through 3

29. Complainant realleges each allegation contained in Paragraphs 1 through 28, inclusive, as if fully set forth herein.

30. FIFRA Section 17(c) requires the Secretary of the Treasury to notify the EPA Administrator of the arrival of pesticides in the United States.

31. FIFRA Section 17(e), 7 U.S.C. 136o(e) requires the Secretary of the Treasury, in consultation with the Administrator, to issue regulations for the enforcement of FIFRA Section 17(c).

32. Pursuant to FIFRA Section 17(e), the Secretary of the Treasury, through the United States Customs Service, issued regulations for the enforcement of Section 17(c) of FIFRA at 19 C.F.R. 12.110-12.117.

33. 19 C.F.R. 12.112(a) requires an importer desiring to import pesticides or devices into the United States to submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices (EPA Form 3540-1) (hereinafter "Notice of Arrival"), prior to the arrival of the shipment in the United States.

34. Through the Notice of Arrival, the importer reports vital information to EPA such as the major active ingredients, quantity, country of origin, carrier, port of entry, and points of contact. This information allows EPA to make informed decisions, before pesticides arrive in the United States, as to whether such importation will pose unreasonable adverse risks to public health and the environment. The Notice of Arrival also provides contact information in the event of an emergency related to the movement of potentially toxic pesticide materials.

35. The Notice of Arrival is a report required by FIFRA that must be filed with the Administrator, prior to the arrival of each pesticide in the United States.

36. On or about May 2, 2012, EPA conducted an inspection at Respondent's facility at 209 Redneck Avenue, Little Ferry, NJ ("May 9 Inspection").

37. As a direct result of EPA's inspection of Respondent's Facility on May 2, 2012, EPA staff obtained sales invoices for the Respondent's purchases of the Fabuloso and Clorox pesticide products from Mexico.

38. Respondent imported the Clorox and Fabuloso pesticide products on the following dates:

Invoice Number	Date	Item	Quantity
1478	01/17/12	Fabuloso Liquid-Amanecer	55
1478	01/17/12	Fabuloso Liquid-Mar Fresco	55
1478	01/17/12	Clorox Liquid	288
1553	03/09/12	Clorox Liquid	77

39. As the consignee of the shipments identified in paragraph 38 above, Respondent was the "importer desiring to import pesticides" within the meaning of 19 C.F.R. Section 12.112(a).

40. EPA sent an Information Request Letter ("IRL") to Respondent on June 5, 2012. The IRL asked for information and documentation of importation and sales of the Fabuloso and Clorox products.

41. Respondent's June 8, 2012 response to EPA's IRL acknowledged that the company had provided EPA with the documents for the two shipments of Fabuloso and Clorox products imported from Mexico.

42. No Notices of Arrival were submitted to EPA for any of the imported Clorox products prior to their arrival in the US.

43. No Notices of Arrival were submitted to EPA for any of the imported Fabuloso products prior to their arrival in the US.

44. Respondent distributes pesticides and is, therefore, a distributor who is potentially liable under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), for failure to file required reports.
45. Respondent failed to file Notices of Arrival with EPA for the Clorox products prior to their arrival in the United States.
46. Respondent failed to file Notices of Arrival with EPA for the Fabuloso products prior to their arrival in the United States.
47. Respondent imported the Clorox and Fabuloso pesticide products into the United States without filing a Notice of Arrival with EPA.
48. Respondent's importation of the pesticide products identified in paragraph 38, above, without filing a Notice of Arrival prior to their arrival into the United States is a violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. Section 136j(a)(2)(N), and 19 C.F.R. Section 12.112.

Counts 4 - 5
Sale/Distribution Unregistered Pesticide
Fabuloso

49. Complainant realleges each allegation contained in Paragraphs 1 through 48, inclusive, as if fully set forth herein.
50. During the April 26, 2012 EPA inspection at the Jor Dar facility, the Fabuloso liquid product was present.
51. During the April 26, 2012 inspection, the label for the Fabuloso liquid product had pesticidal claims, including the following statements: "Frescura Antibacterial" (English translation: "Antibacterial Freshness") and "Elimina el 99.99% de bacterias" (English translation: "Kills 99.99% of bacteria").
52. Respondent distributed and/or sold the Fabuloso liquid pesticide products, Mar Fresco (Fresh Sea) and Fresco Amanacer (Fresh Dawn) to Jor-Dar distributors on February 7, 2012 (Invoice #5475).
53. During the May 2, 2012 inspection of the Respondent's facility, Respondent's owner acknowledged that he had "possibly sold" the Fabuloso products with the Spanish labels and disinfectant claims.
54. During the May 9, 2012 inspection of the Quality Wholesale facility, the following four different type of Fabuloso liquid pesticide products were found in stock being held for sale or distribution within the meaning of Section 2(gg) of FIFRA, 7 USC Section 136(gg):
- 1) Fabuloso- Fresco Amanacer (dark green color) (1 liter) (17 cases/12 bottles per case);

- 2) Fabuloso- Energia Naranja (orange color) (1 liter) (18 cases/12 bottles per case);
- 3) Fabuloso – Mar Fresco (blue color) (1.2 liters) (13 cases/12 bottles per case); and
- 4) Fabuloso- Pasion de frutas (light green color) (1 liter) (2 cases/12 bottles per case).

55. During the May 9, 2012 inspection of the Quality Wholesale facility, EPA inspectors collected a physical sample of the Fabuloso liquid product and assigned it Sample Number 05091213520010201a.

56. Each of the labels for the four Fabuloso liquid products identified in paragraph 54, above, had the following statement: “Frescura Antibacterial” (English translation: “Antibacterial Freshness”).

57. Each of the labels of the Fabuloso liquid products identified in paragraph 54, above, except for Mar fresco, had the following statement: “Elimina el 99.99% de bacterias” (English translation: Kills 99.99% of bacteria).

58. The Fabuloso liquid products at the Quality Wholesale facility were received from Respondent.

59. Respondent distributed and/or sold the four types of Fabuloso products identified in paragraph 54, above (Sample Number 05091213520010201b) to the Quality Wholesale facility (see Invoice number 5290) on 12/8/2011.

60. By virtue of the language on the label of the Fabuloso liquid products, these products are intended to remove bacteria and microorganisms, and therefore are antimicrobial pesticides as defined by Section 2 (mm)(1) of FIFRA, 7 U.S. C. Section 136(mm)(1).

61. The Fabuloso liquid products have not been registered by EPA as pesticides.

62. Respondent’s sales or distributions of the unregistered pesticide product, Fabuloso liquid product, on at least two occasions, as identified in paragraphs 52 and 59, above, constitute unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 6 -7
Sale/Distribution Misbranded Pesticide
Fabuloso Liquid

63. Complaint realleges each allegation contained in Paragraphs 1 through 62, inclusive, as if fully set forth herein.

64. The labels of the Fabuloso liquid products were written in Spanish.

65. The labels for the Fabuloso liquid products did not contain the following information in English: name of the product, the name and address of the producer or registrant or person for whom the product was produced, net weight or measure of contents, the product registration number, the producer establishment number, ingredient statement, hazard and precautionary statement, directions for use and use classification.

66. The Fabuloso liquid products are misbranded, because all required labeling text is not in the English language, as required under 40 C.F.R. Section 156.10(a)(3).

67. The Fabuloso liquid products are misbranded under Section 2(q)(1)(E), 7 U.S.C. Section 136(a)(1)(E) and 40 C.F.R. Sections 156.10(a)(1)(3), because it is not likely to be read or understood by the ordinary individual under customary conditions of purchase and use.

68. FIFRA Section 12(a)(1)(E), 7 U.S.C. Section 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

69. Respondent's sale or distribution of the misbranded pesticide products, "Fabuloso" liquid products on at least two occasions, as identified in paragraphs 52 and 59, above, constitute unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).

Count 8
Sale/Distribution Unregistered Pesticide
Clorox

70. Complainant realleges each allegation contained in Paragraphs 1 through 69, inclusive, as if fully set forth herein.

71. During the April 26, 2012 EPA inspection at the Jor Dar facility, EPA's inspectors found the Clorox liquid product in stock being held for sale or distribution within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).

72. During the April 26, 2012 EPA inspection, the label for the Clorox liquid product had a pesticidal claim, "desinfecta" (English translation: "Disinfectant").

73. The Clorox liquid product found at the Jor Dar facility was received from Respondent.

74. The Clorox liquid product found at the Jor Dar facility had not been registered by EPA as a pesticide.

75. Respondent distributed and/or sold the Clorox liquid pesticide product to Jor-Dar distributors on February 7, 2012 (see Invoice #5475).

76. During the May 2, 2012 inspection at Respondent's facility, Respondent's owner acknowledged that he had "possibly sold" the Clorox product with a Spanish label and disinfectant claim.

77. By virtue of the language on the label of the Clorox liquid product, this product offered for sale or distribution by Respondent is intended to destroy and remove bacteria and microorganisms, and therefore is an antimicrobial pesticide as defined by Section 2 (mm)(1) of FIFRA, 7 U.S. C. Section 136(mm)(1).

78. Respondent's sales or distributions of the unregistered pesticide product, Clorox liquid product, on at least one occasion, as identified in paragraph 75, above, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 9
Sale/Distribution Misbranded Pesticide
Clorox

79. Complaint realleges each allegation contained in Paragraph 1 through 78, inclusive, as if fully set forth herein.

80. The label of the Clorox liquid product was written in Spanish, except for a small sticker with English words, which was affixed to the Spanish label.

81. The label for the Clorox liquid product did not contain the following information in English: the product registration number, the producer establishment number, and the name and percentage of each active ingredient, and the total percentage of all inert ingredients.

82. The Clorox liquid product is misbranded, because all required labeling text is not in the English language, as required under 40 C.F.R. Section 156.10(a)(3).

83. The Clorox liquid product is misbranded under Section 2(q)(1)(E), 7 U.S.C. Section 136(a)(1)(E) and 40 C.F.R. Sections 156.10(a)(1)(3), because it is not likely to be read or understood by the ordinary individual under customary conditions of purchase and use.

84. FIFRA Section 12(a)(1)(E), 7 U.S.C. Section 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

85. Respondent's sale or distribution of the misbranded pesticide product "Clorox," on at least one (1) occasion, as identified in paragraph 75, above, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended, which authorizes the assessment of a civil penalty of up to \$5,000 for each violation of “any provision of” subchapter II of FIFRA, 7 U.S.C. §§ 136 - 136y. The statutory maximum assessment per violation was raised to \$6,500 for the period March 15, 2004 through January 12, 2009. Effective after January 12, 2009, the statutory maximum is raised to \$7,500. 40 C.F.R. Part 19.

For purposes of determining the amount of any penalty to be assessed, Section 14 of FIFRA requires that EPA “shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person’s ability to continue in business, and the gravity of the violation.” Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its filing, with specific reference to EPA’s “FIFRA Enforcement Response Policy [for] The Federal Insecticide, Fungicide and Rodenticide Act,” dated December 3, 2009 (hereinafter referred to as the “ERP”). This guidance policy provides rational, consistent and equitable calculation methodologies for applying the statutory penalty criteria enumerated above to particular cases. A copy of the ERP is available upon request or may be obtained from the Internet at this address: <http://cfpub.epa.gov/enforcement/resources/policies/civil/erp>

Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in this Complaint:

Import of pesticide products Fabuloso and Clorox without NOA	
3 Counts @ \$5,670 per violation	\$17,010
Sale/distribution of unregistered pesticide product Fabuloso	
2 Counts @ \$7,150 per violation	\$ 14,300
Sale/distribution of misbranded pesticide product Fabuloso	
2 Counts @ \$4,250 per violation	\$ 8,500
Sale/distribution of unregistered pesticide product Clorox	
1 Count @ \$7,150 per violation	\$ 7,150
Sale/distribution of misbranded pesticide product Clorox	
1 Count @ \$4,250 per violation	\$ 4,250
Total (rounded to the nearest \$100)	\$51,200

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS", and are codified at 40 C.F.R. Part 22 (2012). A copy of these rules accompanies this "Complaint and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint. (40 C.F.R. 22.15(a)) An Answer must be filed within 30 days after service of a Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, N.Y. 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. (40 C.F.R. § 22.15(a)).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge (40 C.F.R. § 22.15(b)). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. (40 C.F.R. § 22.15(b)) The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), and (3) whether Respondent requests a hearing (40 C.F.R. § 22.15(b)).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

Note that any documents filed after Respondent has filed an Answer in this proceeding should not be filed using the above address, but should be filed following the instructions specified in section "D" below.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held (40 C.F.R. § 22.15(c)). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. (40 C.F.R. § 22.15(c))

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.35(b). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation (40 C.F.R. § 22.15(d)). If Respondent fails to file a timely (*i.e.*, in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion (40 C.F.R. § 22.17). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint (40 C.F.R. § 22.17(a)). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c) (40 C.F.R. § 22.17(d)). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in Federal court.

D. Filing of Documents After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed in this proceeding after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk, acting for the Regional Hearing Clerk, at either of the following addresses:

If filing by UPS, FedEx, DHL or other courier, or personal delivery, address to:

Sybil Anderson, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

If filing by the United States Postal Service, address to:

Sybil Anderson, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review (40 C.F.R. § 22.27(d)).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so within 30 days after the initial decision is served (40 C.F.R. § 22.30(a)). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, five days shall be added to the time allowed by these [rules] for the filing of a responsive document. Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations (40 C.F.R. § 22.18(b)). At an informal conference with representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Bruce Aber, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, N.Y. 10007-1866
212-637-3224 (phone)
Aber.bruce@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing (40 C.F.R. § 22.18(b)(1)). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement (40 C.F.R. § 22.18(b)(2)). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement (40 C.F.R. § 22.18(b)(2)). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed (40 C.F.R. § 22.18(b)(3)).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the Consent Agreement terminates this administrative litigation and civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment (40 C.F.R. § 22.18(a)). A copy should also be provided to the EPA Assistant Regional Counsel identified on the previous page. Such payment shall be made by cashier's or certified check or by electronic fund transfer (EFT). If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

The check shall be identified with a notation listing the name of the matter (In the Matter of Caribbean Corp.) and the Docket Number (FIFRA-02-2013-5108).

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- 4) Federal Reserve Bank of New York ABA routing number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) Caribbean Corp.
- 7) Case Number: FIFRA-02-2013-5108

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order. Issuance of this Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2

Dated: MAR 26, 2013
New York, New York

TO: Manuel Lopez, President
Caribbean Corp.
209 Redneck Ave
Suite #4
Little Ferry, NJ 07643

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing docket number **FIFRA-02-2013-5108**, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Manuel Lopez, President
Caribbean Corp.
209 Redneck Ave
Suite #4
Little Ferry, NJ 07643

I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: March 27, 2013
New York, New York

Smidred N. Baez