



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

JUN 03 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Adam G. Sowatzka
Attorney at Law
King & Spalding
1180 Peachtree Street, NE
Atlanta, Georgia 30309

Re: W. M. Barr and Company, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2014-3004(b)

Dear Mr. Sowatzka:

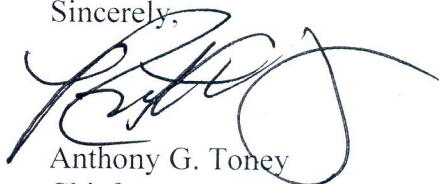
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U.S. Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mr. Phillip Beard of the EPA Region 4 staff at (404) 562-9012.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Toney', written in a cursive style.

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Tennessee Department of Agriculture
State File No. 0413100205301

enforcement action as the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between the EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Phillip Beard
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012.

5. Respondent is W. M. Barr and Company, Inc., a Tennessee corporation, located at 6750 Lenox Center Court, Suite 200, Memphis, Tennessee 38115.
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.

III. Specific Allegations

7. On or about April 13, 2010, and September 11, 2011, inspectors, duly appointed by the EPA Administrator, inspected Respondent's facility located at 2170 Buoy Street, Memphis, Tennessee 38113. During these inspections, the EPA discovered eight DampRid products, including the following: 1) DampRid Hanging Moisture Absorber

(Cedar Fragrance); 2) DampRid Hi-Capacity Moisture Absorber; 3) DampRid Refillable Moisture Absorber; 4) DampRid Sachet Moisture Absorber; 5) DampRid Disposable Moisture Absorber; 6) DampRid Moisture Absorber Refill; 7) DampRid Easy-Fill System Any Room Moisture Absorber; and 8) DampRid Easy-Fill System (4 Pack Refill). Each of these products was found to be packaged, labeled and ready for release for shipment.

8. Based on information obtained during the April 13, 2010, and September 11, 2011 inspections, a follow up inspection was conducted on December 5, 2011, at Home Depot located at 2450 Cumberland Parkway, southeast, Atlanta, Georgia 30339. Based on electronic shipping records gathered during the Home Depot inspection, the EPA documented that W. M. Barr had sold or distributed the DampRid products, identified above, to Home Depot on at least 113 occasions.
9. During the establishment inspection, the EPA's inspector observed that the DampRid product labels bore the following pesticidal claims: "*Prevents Mold and Mildew Stains,*" "*Prevents Mold and Mildew Stains and Allergens by Eliminating the Excess Moisture that Allows Mold and Mildew to Grow,*" and "*...Eliminates Excess Moisture in the Air, Prevents Stains and Damage caused by Mold and Mildew and Eliminates Odors caused by Moisture.*"
10. A Product which bears a pesticidal claim on its label is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
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. The term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
13. Pesticides that are sold and distributed in the United States are required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
14. At the time of the inspections, the labels on the DampRid products listed in paragraph 7 made the pesticidal claims identified in paragraph 8 and were, therefore, pesticides. Further, at the time of the inspections, the DampRid products listed in paragraph 7 were not registered as pesticides with the EPA as required by Section 3 of FIFRA.
15. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful 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.
16. Respondent distributed or sold unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least 113 occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
17. 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.
18. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the 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.

19. 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 **TWO HUNDRED NINETY-FOUR THOUSAND EIGHT HUNDRED FORTY DOLLARS (\$294,840)** 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.

IV. Consent Agreement

20. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
21. 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.
22. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
23. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA as it relates to the DampRid product line exclusively.
24. 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 the 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.
25. 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.

V. Final Order

26. Respondent is assessed a civil penalty of **TWO HUNDRED NINETY-FOUR THOUSAND EIGHT HUNDRED AND FORTY DOLLARS** (\$294,840). Eight payments will be made to complete payment of the entire civil penalty including interest. The first payment shall be made thirty (30) days after the effective date of the CAFO. The subsequent seven payments shall be due in 120-day intervals thereafter, or as specified in the payment schedule below. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **TWO HUNDRED NINETY SEVEN THOUSAND FOUR HUNDRED SIXTY-SIX DOLLARS** and **SIXTEEN CENTS** (\$297,466.16). Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days after effective date of CAFO	\$37,183.27
2	within 120 days thereafter	\$37,183.27
3	within 240days thereafter	\$37,183.27
4	within 360 days thereafter	\$37,183.27
5	within 480 days thereafter	\$37,183.27
6	within 600 days thereafter	\$37,183.27
7	within 720 days thereafter	\$37,183.27
8	within 840 days thereafter	\$37,183.27

27. Respondent shall remit each payment of the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check. The penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

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

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1818.

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

28. At the time of each 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
Atlanta, Georgia 30303-8960;

Phillip Beard
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

29. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) shall become immediately due and payable on the 31st day from such due date. In addition, Respondent

shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.

30. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
31. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **TWO HUNDRED NINETY FOUR THOUSAND EIGHTY HUNDRED FORTY DOLLARS** (\$294,840) within 30 days of the effective date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.
32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the 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. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, the EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with

40 C.F.R. § 13.11(a). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

33. 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.
34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. This CAFO shall be binding upon the Respondent, its successors and assigns.
36. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

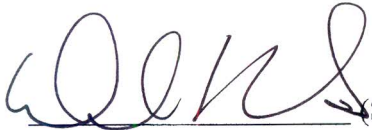
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Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: W. M. Barr and Company, Inc.

Docket No.: FIFRA-04-2014-3004(b)

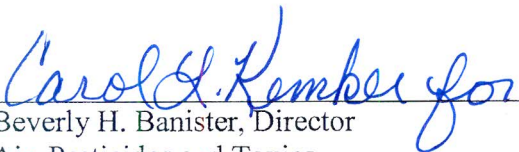
By:  (Signature)

Date: May 13, 2014

Name: Dave Hagberg (Typed or Printed)


Title: President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: 
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

Date: 5/27/14

APPROVED AND SO ORDERED this 29 day of May 2014.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order In the Matter of: W. M. Barr and Company, Inc., Docket Number FIFRA-04-2014-3004(b), to the addressees listed below:

Mr. Adam G. Sowatzka (via Certified Mail, Return Receipt Requested)
Attorney at Law
King & Spalding
1180 Peachtree Street, NE
Atlanta, Georgia 30309

Phillip Beard (via EPA's internal mail)
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Lucia Mendez (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Date: 6-3-14



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9511