



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

FEB 20 2009

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. Charles Pilcher
d/b/a Animeds
d/b/a theleafighters
385 Hitchcock Road
Dallas, Georgia 30157

SUBJ: Docket No. FIFRA-04-2009-3019(b)
Charles Pilcher, d/b/a Animeds and d/b/a theleafighters

Dear Mr. Pilcher:

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.

As stated in Section IV of the CAFO, the assessed penalty of \$1,200 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Molly Freeman Miller at (404) 562- 9684.

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

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 (SEC) any environmental enforcement actions taken by EPA.

Sincerely,



Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Tommy Gray, GDA
State File No. 042108173001

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV

HEARINGS CLERK

2009 FEB 20 PM 3:30

In the Matter of:)
)
Charles Pilcher)
d/b/a Animeds)
d/b/a thefleafighters)
)
Respondent.)
_____)

Docket No. FIFRA-04-2009-3019(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Charles Pilcher, d/b/a Animeds and d/b/a thefleafighters.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 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 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994.
4. Pursuant to 40 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Molly Freeman Miller
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9684.

5. Respondent is Charles Pilcher, d/b/a Animedds and d/b/a thefleafighters, located at 385 Hitchcock Road, Dallas, Georgia 30157.
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 operates a registered EPA establishment and has been assigned EPA Establishment No. 85292-GA-001.

III. Specific Allegations

8. On or about April 10, 2008, an authorized representative of the EPA conducted an inspection of Charles Pilcher, d/b/a Animedds and d/b/a thefleafighters, 385 Hitchcock Road, Dallas, Georgia 30157, and of Respondent's internet sales at www.ebay.com.
9. During the inspection, "Advantage Flea 10 Dose Cat," "Advantage Flea 5 Dose Cat," "Frontline Plus Flea Tick 8 Dose Cat," "Precision Kat Kit," and "Precision Dog Kit," (hereinafter "the kits") were identified as being sold or distributed by the Respondent. These kits are products that contain one dose of a registered flea and tick pesticide (such

Advantage or Frontline), a vial, and a syringe packaged with alternate directions for use that require partial dosing for smaller animals. The kits may also be sold under alternate names.

10. The kits are pesticides as 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. Respondent “distributes or sells” pesticides. The term “to distribute to 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. Under Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), it is unlawful for any person in any state to distribute or sell any registered pesticide if any claims made for it as part of its distribution or sale substantially differ from any claims made for it in connection with its registration.
14. At the time of the inspection, the kits made claims that each vial of product meant for a single dose of flea and/or tick control could be used for multiple doses, which is not part of the EPA accepted registration for any of these registered flea and tick products.

15. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
16. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) defines misbranding to include labeling that bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
17. 40 C.F.R. § 156.10(a)(5)(v) states that a pesticide is false or misleading if it bears a statement that directly or indirectly implies the pesticide is recommended by any agency of the Federal Government.
18. At the time of the inspection, the www.ebay.com offers for sale of the kits bore a statement, "US EPA Approved," that implied that the product was recommended or endorsed by the Environmental Protection Agency.
19. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F) states a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and are adequate to protect health and the environment.
20. At the time of the inspection, the kits did not contain adequate directions for use of the pesticides.
21. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any state to distribute or sell a pesticide which is misbranded.
22. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

23. Also, during the aforementioned inspection of Respondent's offers for sale of products on www.ebay.com, the product "Flea Fighter for Cats" was identified as being sold or distributed by the Respondent.
24. The Flea Fighter for Cats is a pesticide as 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.
25. Flea Fighter for Cats is a pesticide which contains the registered pesticide "Merit 1.47 TLC Insecticide Concentrate," EPA Reg. No. 72155-55, but the Flea Fighter for Cats is not registered as a pesticide with EPA.
26. 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.
27. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least two separate occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
28. "Merit 1.47 TLC Insecticide Concentrate," EPA Reg. No. 72155-55, is a registered pesticide for use on trees, shrubs, and other plants outdoors to prevent insect damage.
29. Merit 1.47 TLC Insecticide Concentrate was used in the formulation of the unregistered pesticide Flea Fighter for Cats, which claimed to prevent fleas on cats. The directions for use and other label requirements were not followed by the Respondent.
30. According to Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

31. Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
32. 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.
33. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires 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. 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 ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200) 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.

III. Consent Agreement

34. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
35. 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.
36. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
37. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
38. 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 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.

39. 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.

IV. Final Order

40. Respondent is assessed a civil penalty of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200) which shall be paid within 30 days from the effective date of this CAFO.
41. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

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

The check shall reference the name and the Docket Number of the CAFO ["Charles Pilcher, FIFRA-04-2009-3019 (b)"].

42. At the time of 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, S.W.
Atlanta, Georgia 30303-8960;

Molly Freeman Miller
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

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

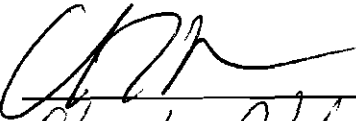
43. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
44. Pursuant to 31 U.S.C. § 3717, 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. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. 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.
45. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
46. This CAFO shall be binding upon the Respondent, its successors and assigns.
47. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

V. Effective Date

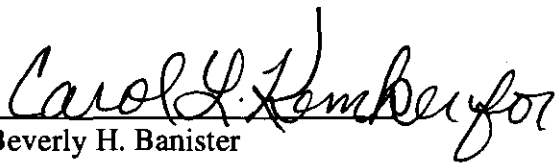
48. The effective date of this CAFO shall be the date on which the CAFO is filed with the
Regional Hearing Clerk.

AGREED AND CONSENTED TO:

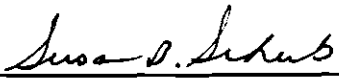
Charles Pilcher, d/b/a Animedts and d/b/a thefleafighters

By:  (Signature) Date: 1-22-09
Name: Charles Pilcher (Typed or Printed)
Title: Owner (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 2/10/09
Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 18th day of Feb. 2009.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original of the foregoing Consent Agreement and Final Order, In the Matter of: Charles Pilcher d/b/a Animeds d/a/a/ the fleafighters, Docket No. FIFRA 04-2009-3019(b), and served a true and correct copy of the same on the date shown below, to the parties listed, in the manner indicated:

Molly Freeman Miller
APTMD
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Jennifer Lewis
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth St., SW
Atlanta, GA 30303

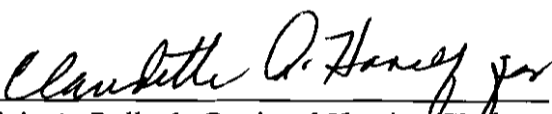
(Via EPA's internal mail)

(Respondent)

(Via Certified Mail, Return Receipt Requested)

Mr. Charles Pilcher
d/b/a Animeds
d/b/a thefleafighters
385 Hitchcock Rd.
Dallas, GA 30157

Date: 2/20/09


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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 2/13/09
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Charles Pilcher d/ha Animed
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 1200
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2009 3019 (6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |