



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUL 23 2013

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mrs. Jennifer Klinowski  
Oakhurst Ace Hardware  
9137 Oakhurst Road  
Seminole, Florida 33776

Re: Oakhurst Ace Hardware; Establishment No. 54480-FL-001  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2013-3127(b)

Dear Mrs. Klinowski:

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 V of the CAFO, the assessed penalty of \$1,650 is to be paid 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.

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 EPA.

Should you have any questions about this matter or your compliance status in the future, please call Ms. Mary Summers at (404) 562-8997.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
 )  
Oakhurst Ace Hardware )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-04-2013-3127(b)

RECEIVED  
EPA REGION IV  
2013 JUL 23 PH 3:21  
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (hereinafter "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 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Oakhurst Ace Hardware.
2. 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

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

Mary Summers  
Case Development Officer  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960.

5. Respondent is Oakhurst Ace Hardware, a Florida corporation, located at 9137 Oakhurst Road, Seminole, Florida 33776.
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 is a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 67.3.
8. Respondent's establishment, located at 4501 34<sup>th</sup> Street, St. Petersburg, Florida, is registered with the Agency as a pesticide-producing establishment.
9. Respondent's EPA Establishment Number is 54480-FL-001.

## III. EPA's Statement of Facts and Allegations of Violation

10. Producers operating an establishment registered with the EPA are required to submit to the Administrator of the EPA an annual report which indicates the types and amounts of



pesticides or active ingredients which they are currently producing, which they produced during the past year, and which they sold or distributed during the past year, pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations promulgated at 40 C.F.R. § 167.85.

11. Submittal of the annual reports of pesticide-production for calendar years 2010, 2011 and 2012, were due on or before March 1, 2011, March 1, 2012, and March 1, 2013, respectively.
12. Respondent failed to submit the annual reports by their due dates.
13. Therefore, Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).
14. 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.
15. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a), 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.
16. The EPA proposes to assess a total civil penalty of **SIXTEEN HUNDRED, FIFTY DOLLARS (\$1650)** against the Respondent for the above-described violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

#### IV. Consent Agreement

17. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above, but neither admits nor denies the EPA's allegations of violations, set forth above.

18. 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.
19. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
20. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
21. Respondent agrees to submit to the EPA all future annual pesticide-production reports required under Section 7 of FIFRA, 7 U.S.C. § 136(e), on or before the March 1<sup>st</sup> due date. Respondent shall send the reports by means of certified mail, return receipt requested, to the following address:

U.S. EPA – Region 4  
Sam Nunn Atlanta Federal Center  
Chemical Products & Asbestos Section  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960.

22. Compliance with this CAFO shall resolve the allegation of the violation 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.
23. 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

24. Respondent shall pay a civil penalty of **SIXTEEN HUNDRED, FIFTY DOLLARS (\$1650)** for the violations alleged in Section III of this CAFO.
25. The payment is due within thirty (30) days of the effective date of this CAFO.
26. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to the "Treasurer, United States of America," to the following address:

Address for payment submittal using the United States Postal Service:

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

Overnight delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.) using the following address:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101  
Contact Number: 314-418-1028

**The check shall reference on its face "Docket No. FIFRA-04-2013-3127(b)."**

27. 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  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

Mary Summers  
Case Development Officer  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

and

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

28. 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.
29. 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 principle amount not paid within 90 days of the due date.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns.

32. 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 legally bind that party to this CAFO.

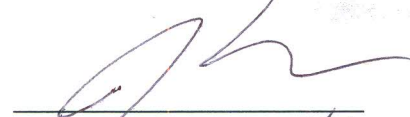
**The remainder of this page is intentionally blank.**



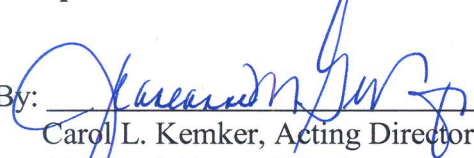
33. The effective date of this CAFO shall be the date on which the CAFO is filed with the  
Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

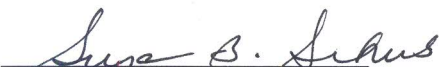
**Respondent: Oakhurst Ace Hardware**

By:  Date: 6.25.13  
Name: Jennifer Klinowski  
Title: Manager

**Complainant: U.S. Environmental Protection Agency**

By:  Date: 7.14.13  
Carol L. Kemker, Acting Director  
Air, Pesticides and Toxics  
Management Division

**APPROVED AND SO ORDERED** this 23 day of July, 2013.

  
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 Oakhurst Ace Hardware, FIFRA Docket Number: FIFRA-04-2013-3127(b), to the addressees listed below.

Mrs. Jennifer Klinowski  
Oakhurst Ace Hardware  
9137 Oakhurst Road  
Seminole, Florida 33776

(Via Certified Mail, Return Receipt Requested)

Mary Summers  
CPAS  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

(Via EPA's internal mail)

Robert Caplan  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

(Via EPA's internal mail)

Date: \_\_\_\_\_

7-23-13



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