



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAR 03 2009

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. Jerome Schwartz, President
Schwartz & Schwartz Holdings, Inc.
d/b/a Jerry Lee Chemical Company
3407 Fairfield Dr.
Pensacola, Florida 32505

SUBJ: Docket No. FIFRA-2009-3021(b)
Schwartz & Schwartz Holdings, Inc.

Dear Mr. Jerome Schwartz:

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 \$2,708 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.

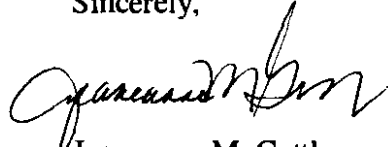
Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Melba Table at (404) 562-9086.

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: Mr. Craig Bryant, FLDACS
State File No. 107-298-1112

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

~~RECEIVED
EPA REGION 4
2009 FEB 31 AM 6:06
HEARING CLERK~~

P.R.

In the Matter of:)
)
Schwartz & Schwartz Holdings, Inc.)
d/b/a Jerry Lee Chemical Company)
)
Respondent.)
_____)

Docket No. FIFRA-04- 2009-3021(b)

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2009 MAR -3 AM 7:41
HEARING CLERK

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) (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 Schwartz & Schwartz Holdings, Inc., d/b/a Jerry Lee Chemical Company.
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 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 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Melba Table
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9086.

III. Specific Allegations

5. Respondent is Schwartz & Schwartz Holdings, Inc., d/b/a Jerry Lee Chemical Company, located at 3407 Old Fairfield Dr., Pensacola, FL 32505.
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. On or about December 7, 2007, an authorized representative of the EPA conducted an inspection at Breeze South, LLC, 3960 W. Navy Blvd. #32, Pensacola, FL 32507 and observed the pesticide product Hi-Test Bleach for sale.
8. During the aforementioned inspection, the inspector learned that the product Hi-Test Bleach, EPA Reg. No. 33458-23-4075, was manufactured by and purchased from the Respondent. Respondent is a supplemental distributor of the sodium hypochloride product.
9. Hi-Test Bleach, is a distributor product, Respondent is the supplemental distributor of this product, as described in 40 CFR 132.

10. Hi-Test Bleach 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.
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. Pursuant to 40 C.F.R. § 152.132(d), supplemental distribution is permit if, among other things the label of the distributor product is the same as that of the registered product.
13. At the time of the inspection, the label on the distributor product Hi-Test Bleach differed from that of the registered product. Specifically, the following statement had been added to the label on the pesticide Hi-Test Bleach, "Formulators using this product are responsible for obtaining EPA registration of their formulated products." This change is not allowed according to 40 C.F.R. § 152.132(d).
14. Pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136j(q)(1)(A), a pesticide is misbranded if its label bears a statement, design, or graphic representation which is false or misleading.
15. 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 to any person any pesticide which is misbranded.
16. 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.

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 THOUSAND SEVEN HUNDRED EIGHT DOLLARS (\$2,708) 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 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
24. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14 of FIFRA, for the specific violations alleged herein. Except as specifically

provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.

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 THOUSAND SEVEN HUNDRED EIGHT DOLLARS (\$2,708) which shall be paid within 30 days from the effective date of this CAFO.
27. Respondent shall remit the civil penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

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

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

28. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

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.

29. 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.
30. 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.
31. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
32. This CAFO shall be binding upon the Respondent, its successors and assigns.

33. 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.

VI. Effective Date

34. 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: Schwartz & Schwartz Holdings, Inc.,
d/b/a Jerry Lee Chemical Company**

Docket No.: FIFRA-04-2009-3021(b)

By: David Schuch (Signature) Date: 2/16/09

Name: David Schuch (Typed or Printed)

Title: v. pres (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Carol L. Kemker Date: 2/24/09

Carol L. Kemker, Action Division Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 2nd day of March, 2009.

By: Susan B. Schub
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 forgoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Jerry Lee Chemical Company, Docket Number: FIFRA-2009-3021(b), to the addressees listed below.

Mr. David Schwartz
Schwartz & Schwartz Holdings, Inc.
d/b/a Jerry Lee Chemical Company
3407 Fairfield Dr.
Pensacola, Florida 32505

(via Certified Mail, Return Receipt Requested)

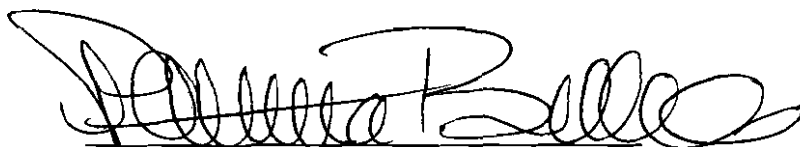
Melba Table
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

(Via EPA's internal mail)

Robert Caplan
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, GA 30303-8960.

(Via EPA's internal mail)

Date: 3-3-09



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960
(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 2/26/09
(Name) (Date)

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

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Schwartz + Schwartz Holdings d/b/a Jerry Lee Chemical Co.
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 2,708
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIERA 04 2009 3021 (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
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|