

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

FILED

Dec 12, 2023

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U.S. EPA REGION 5
HEARING CLERK

In the Matter of:)
)
Adya, Inc., d/b/a Themarox Direct)
Gaylord, Michigan,)
)
Respondent.)
_____)

Docket No. FIFRA-05-2024-0005
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136/(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136/(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Adya, Inc., d/b/a Themarox Direct (hereinafter referred to as “Adya”), a corporation organized under the laws of the State of Michigan and doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the

adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y, and the regulations at 40 C.F.R. §§ 152 and 167.

Statutory and Regulatory Background

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states that no person in any State may distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

12. The regulation at 40 C.F.R. § 152.15(a) provides that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states or implies (by labeling or otherwise) that the substance (either by itself or in a combination with any other substance) can or should be used as a pesticide, or that the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide.

13. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states no person shall produce a pesticide

subject to FIFRA or an active ingredient used in producing a pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with EPA. *See also* 40 C.F.R. § 167.20.

14. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states it is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA.

15. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device of any of its containers or wrappers.”

16. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as “all labels and all other written, printed, or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.”

17. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

18. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as “(1) any insect, rodent, nematode, fungus, weed or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator [of EPA] declares to be a pest under section [25(c)(1), 7 U.S.C. § 136w(c)(1), of FIFRA].” *See also* 40 C.F.R. § 152.5.

19. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as any “substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

20. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “producer” as “a person who manufactures, prepares, compounds, propagates, or processes any pesticide or active ingredient used in producing a pesticide” and “produce” as “means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”

21. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines “establishment” as “any place where

a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”

22. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “distribute or sell” as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

23. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA of up to \$23,494 for each offense occurring after November 2, 2015, and assessed after January 12, 2022, pursuant to Section 14(a)(1), 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

24. Respondent is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

25. Respondent is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

26. At all times relevant to this CAFO, Adya owned or operated a place of business located at 1430 North Old US Highway 27, Gaylord, Michigan (the establishment).

27. On or about August 24, 2022, two inspectors employed with the Michigan Department of Agriculture and Rural Development (MDARD) conducted an inspection at the Adya establishment (the Inspection).

Sale or Distribution of Unregistered Pesticides

28. During the Inspection, the inspectors collected copies of labels and labeling for the product “Purinize,” which the inspectors found in 2-oz, 8-oz and 12-oz containers. The labels collected for Purinize were identical for all three container sizes, and included the following claims:

- a. "Naturally disinfects and clarifies water from virtually any freshwater without harsh chemicals."
- b. "Reduces 200+ contaminants including bacteria, viruses, protozoa, agricultural & industrial chemicals, heavy metals, pharmaceuticals, VOCs, disinfectants and disinfection byproducts."
- c. "Eliminates/reduces 200+ biological & toxic contaminants."

29. The 2-oz Purinize bottle came in a box which included the additional claim, "effective against bacteria, viruses, protozoa, agricultural & industrial chemicals, heavy metals, pharmaceuticals, VOCs, disinfectants and disinfection byproducts."

30. During the Inspection, the inspectors collected a promotional pamphlet for Purinize that contained the following claims:

- a. "Eliminates/reduces 200+ contaminants including pathogens, heavy metals, chemicals, pesticides, pharmaceuticals & more."
- b. "Purinize is a 100% natural , mineral-based water purifier that disinfectants & clarifies water from any freshwater source without harsh, bad-tasting chemicals..."

31. During the Inspection, the inspectors collected copies of labels and labeling for the product "Adya Clarity" which included the claim, "Adya Minerals do the following: - Eliminate anaerobic bacteria."

32. As evidenced by statements on their respective labels and labeling, each of the products "Purinize" and "Adya Clarity" is intended to prevent, destroy, repel or mitigate bacteria and viruses, and therefore each product is a "pesticide" as defined under FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.15(a)(1).

33. Because Purinize and Adya Clarity are pesticides, each product is required to be registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

34. Neither Purinize nor Adya Clarity is registered under Section 3 of FIFRA.

35. Respondent distributed or sold the unregistered pesticide Purinize on or about the dates listed below:

- | | |
|----------------------------|-----------------------------|
| 1. 6/24/2022; Order #P3697 | 10. 6/12/2022; Order #P3693 |
| 2. 7/1/2022; Order #P3698 | 11. 6/23/2022; Order #P3695 |
| 3. 7/5/2022; Order #P3705 | 12. 7/1/2022; Order #P3699 |
| 4. 8/8/2022; Order #P3722 | 13. 7/26/2022; Order #P3717 |
| 5. 8/17/2022; Order #P3728 | 14. 8/1/2022; Order #P3720 |
| 6. 5/30/2022; Order #P3688 | 15. 8/3/2022; Order #P3721 |
| 7. 6/6/2022; Order #P3689 | 16. 8/10/2022; Order #P3724 |
| 8. 6/8/2022; Order #P3690 | 17. 8/10/2022; Order #P3725 |
| 9. 6/16/2022; Order #P3692 | 18. 8/17/2022; Order #P3729 |

36. Respondent distributed or sold the unregistered pesticide Adya Clarity on or about the dates listed below:

- | | |
|-----------------------------|------------------------------|
| 1. 7/30/2022; Order #A11225 | 8. 8/8/2022; Order #A11251 |
| 2. 7/30/2022; Order #A11228 | 9. 8/10/2022; Order #A11255 |
| 3. 7/31/2022; Order #A11235 | 10. 8/11/2022; Order #A11256 |
| 4. 8/1/2022; Order #A11238 | 11. 8/15/2022; Order #A11258 |
| 5. 8/4/2022; Order #A11247 | 12. 8/17/2022; Order #A11260 |
| 6. 8/4/2022; Order #A11249 | 13. 8/17/2022; Order #A11262 |
| 7. 8/6/2022; Order #A11250 | 14. 8/21/2022; Order #A11290 |

Pesticide Production in an Unregistered Establishment

37. Respondent's place of business is an "establishment" as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3.

38. At all times relevant to this CAFO, Respondent's establishment was not registered with EPA as required under Section 7 of FIFRA, 7 U.S.C. § 136e.

39. During the Inspection, the inspectors collected production records for one batch of thirty-two bottles of 32-oz Purinize identified as lot number 71422, produced on July 14, 2022.

40. During the Inspection, the inspectors collected production records for one batch of thirty-two bottles of 32-oz Adya Clarity identified as lot number 51022AC, produced on May 10, 2022.

41. Respondent "produced" Purinize and Adya Clarity at its Facility as defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Counts 1-32 (Distribution or Sale of Unregistered Pesticides)

42. Complainant incorporates paragraphs 1 through 42 of this CAFO as though set forth in this paragraph.

43. Respondent distributed or sold Purinize, a "pesticide" as that term is defined under FIFRA, which was not registered under Section 3 of FIFRA, on at least 18 separate occasions between on or about May 30, 2022, and on or about August 17, 2022.

44. Respondent distributed or sold Adya Clarity, a "pesticide" as that term is defined under FIFRA, which was not registered under Section 3 of FIFRA, on at least 14 separate occasions between on or about July 30, 2022, and on or about August 21, 2022.

45. Respondent's distribution or sale of the unregistered pesticides, Purinize and Adya Clarity, on a total of 32 separate occasions constitutes 32 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

46. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136/(a).

Counts 33-34 (Production in an Unregistered Establishment)

47. Complainant incorporates paragraphs 1 through 42 of this CAFO, as if set forth in this paragraph.

48. During calendar year 2022, Respondent “produced” one batch each of Purinize and Adya Clarity at its establishment, which was not registered as an establishment under Section 7 of FIFRA, 7 U.S.C. § 136e.

49. Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a) by producing pesticides at an unregistered establishment.

50. Respondent’s production of pesticide products in an unregistered establishment constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and its implementing regulations at 40 C.F.R. § 167.20, and subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

51. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is **Ten-Thousand Dollars (\$10,000)**. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009.

52. Respondent must pay the \$10,000 civil penalty in four (4) installments with interest, as follows:

Installment	Due By	Payment	Principal	Interest
Payment #1	Within 30 days of effective date of CAFO	\$2,500	\$2,500	\$0
Payment #2	Within 120 days of effective date of CAFO]	\$2,593.75	\$2,500	\$93.75
Payment #3	Within 240 days of effective date of CAFO]	\$2,550	\$2,500	\$50.00
Payment #4	Within 360 days of effective date of CAFO]	\$2,525	\$2,500	\$25.00

Respondent must pay each of the installments by sending a cashier's or certified check, payable to

"Treasurer, United States of America," to:

U.S. EPA
 Fines and Penalties
 Cincinnati Finance Center
 Post Office Box 979078
 St. Louis, Missouri 63197-9000

For checks sent by express mail, please send the cashier's or certified check, payable to "Treasurer,

United States of America," to:

U.S. Environmental Protection Agency
 Government Lockbox 979078
 3180 Rider Trail S.
 Earth City, MO 63045

The check must note "Adya, Inc." and the docket number of this CAFO, Docket No. FIFRA-05-2024-0005.

53. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
 U.S. EPA, Region 5
r5hearingclerk@epa.gov

Angela Bouche (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
bouche.angela@epa.gov
and
R5lecab@epa.gov

James Cha (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
cha.james@epa.gov

54. This civil penalty is not deductible for federal tax purposes.

55. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136/(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

56. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

57. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: cha.james@epa.gov (for Complainant), and info@themroxdirect.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

58. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

59. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

60. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

61. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

62. The terms of this CAFO bind Respondent, its successors and assigns.

63. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

64. Each party agrees to bear its own costs and attorneys fees, in this action.

65. This CAFO constitutes the entire agreement between the parties.

Adya, Inc. d/b/a Themarox Direct, Respondent

11/26/2023
Date

Matthew Bakos
Matthew Bakos
President/Owner
Adya, Inc. d/b/a Themarox Direct

In the Matter of:
Adya, Inc. d/b/a Themarox Direct
Docket No.: FIFRA-05-2024-0005

United States Environmental Protection Agency, Complainant

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

In the Matter of:
Adya, Inc. d/b/a Themarox Direct
Docket No.: FIFRA-05-2024-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5