

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2023-0012
)	
Biosolutions LLC)	Proceeding to Assess a Civil Penalty
Grand Haven, Michigan)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136/(a)
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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 Biosolutions LLC, a limited liability company 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. §§ 152.132 and 169.2.

Statutory and Regulatory Background

10. FIFRA Section 12(a)(1)(A), 7 U.S.C. § 136j, 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.

11. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), states that it is unlawful for any person to refuse to prepare, maintain, or submit any records required by or under section 5, 7, 8, 11 or 19 of FIFRA.

12. 40 C.F.R. § 152.132 states that a registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own through a process termed supplemental distribution. Supplemental distribution is permitted upon notification to the Agency if all of the following conditions are met: (a) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration

number of the registered product, (b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product, (c) The distributor product is not repackaged (remains in the producer's unopened containers), (d) The label of the distributor product is the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor's company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary, and (e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

13. 40 C.F.R. § 152.132 states that the distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

14. 40 C.F.R. § 169.2(a) states that all producers of pesticides, devices, or active ingredients used in producing pesticides subject to this Act, including pesticides produced pursuant to an experimental use permit and pesticides, devices, and pesticide active ingredients produced for export, shall maintain records showing, among other things, an EPA Registration Number.

15. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term "person" as "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not."

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.”

17. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

18. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” 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 which the Administrator [of the EPA] declares to be a pest under Section 25(c)(1) of FIFRA.”

19. 40 C.F.R. § 152.3 defines the term “pesticide product” as “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.”

20. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$21,805 for each offense that occurred after November 2, 2015, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

21. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 1800 Industrial Park Drive, Grand Haven, Michigan, EPA Establishment

Number 84008-MI-2 (the Establishment).

23. On or about March 8, 2019, an inspector employed by the Michigan Department of Agriculture and Rural Development (MDARD) and authorized to conduct inspections under FIFRA, conducted an inspection at the Establishment (the Inspection).

24. As part of the Inspection the inspector took statements and photographs, and collected various records including labeling, production, receiving, and distribution records for Biosolutions Disinfectant (EPA Registration Number (EPA Reg. No.) 10324-154-84008) and Disinfecting Detergent (EPA Reg. No. 10324-155-84008), which were produced at the Establishment at the time of the Inspection.

25. Biosolutions Disinfectant (EPA Reg. No. 10324-154-84008) and Disinfecting Detergent (EPA Reg. No. 10324-155-84008) are “pesticides” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. On or about November 13, 2018, EPA approved a Supplemental Distribution of a Registered Pesticide Product Form (EPA Form 8570-5) for the supplemental distribution of Maquat 128-NHQ (EPA Reg. No. 10324-155), registered to Mason Chemical Company, for Biosolutions LLC. The supplemental distributor product was registered as Disinfecting Detergent and assigned EPA Reg. No. 10324-155-84008.

27. Prior to November 13, 2018, Disinfecting Detergent (EPA Reg. No. 10324-155-84008) was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

28. Respondent’s distribution or sale of the unregistered pesticide, Disinfecting Detergent (EPA Reg. No. 10324-155-84008) constitutes six unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) because it was not registered under Section 3 of FIFRA at the time of sale or distribution.

29. The production records for Biosolutions Disinfectant (EPA Reg. No. 10324-154-84008) for calendar year 2018 and 2019 that were collected during the Inspection, failed to contain the EPA Registration Number of the pesticide product as required by 40 C.F.R. § 169.2.

30. The production records for Disinfecting Detergent (EPA Reg. No. 10324-155-84008) for calendar year 2018 that were collected during the Inspection, failed to contain the EPA Registration Number of the pesticide product as required by 40 C.F.R. § 169.2.

31. During calendar year 2018, Respondent failed to maintain complete production records for Biosolutions Disinfectant (EPA Reg. No. 10324-154-84008) for production lot numbers 010218, 031618, 042318, 052418, 071718, 090418, and 092118, and for Disinfecting Detergent (EPA Reg. No. 10324-155-84008) for production lot numbers 032118, 050118, 072518, 092018, and 102218.

32. During calendar year 2019, Respondent failed to maintain complete production records for Biosolutions Disinfectant (EPA Reg. No. 10324-154-84008) for production lot numbers 010919 and 021919.

33. Respondent's failure to maintain complete production records for Biosolutions Disinfectant (EPA Reg. No. 10324-154-84008) and Disinfecting Detergent (EPA Reg. No. 10324-155-84008) constitutes 14 unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Counts I - VI

34. Complainant incorporates paragraphs 1-33 of this CAFO, as if set forth in this paragraph.

35. Prior to November 13, 2018, Respondent distributed or sold the unregistered pesticide, Disinfecting Detergent (EPA Reg. No. 10324-155-84008), on at least six separate occasions before it was registered under Section 3 of FIFRA.

36. Respondent's distribution or sale of the unregistered pesticide Disinfecting Detergent (EPA Reg. No. 10324-155-84008), on a least 6 separate occasions prior to November 13, 2018, constitutes six unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

37. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count VII

38. Complainant incorporates paragraphs 1 through 33 of this CAFO as though set forth in this paragraph.

39. During the Inspection, the inspector collected production records for Disinfecting Detergent (EPA Reg. No. 10324-155-84008), lot numbers 032118, 050118, 072518, 092018, and 102218, for production occurring on or about March 21, 2018; May 1, 2018; July 25, 2018; September 20, 2018; and October 21, 2018, respectively.

40. Respondent's production records for production occurring on or about the dates listed in paragraph 39 for Disinfecting Detergent (EPA Reg. No. 10324-155-84008), failed to identify the pesticide product's EPA Registration Number as required by C.F.R. § 169.2(a).

41. Respondent's failure to maintain production records including the EPA Registration Number for Disinfecting Detergent (EPA Reg. No. 10324-155-84008) on a least one occasion in 2018, constitutes an unlawful act, pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

42. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Count VIII-IV

43. Complainant incorporates paragraphs 1 through 33 of this CAFO as though set forth in this paragraph.

44. During the Inspection, the inspector collected production records for Biosolutions Disinfectant (EPA Reg. No. 10324-154-84008), lot numbers 010218, 031618, 042318, 052418, 071718, 090418, 092118, 010919, and 021919 for production occurring on or about January 2, 2018; March 16, 2018; April 23, 2018; May 24, 2018; July 17, 2018; September 4, 2018; September 21, 2018; January 9, 2019; and February 19, 2019, respectively.

45. Respondent's production records for production occurring on or about the dates listed in paragraph 44 for Biosolutions Disinfectant (EPA Reg. No. 10324-154-84008), failed to identify the pesticide product's EPA Registration Number as required by C.F.R. § 169.2(a).

46. Respondent's failure to maintain production records including the EPA Registration Number for Biosolutions Disinfectant (EPA Reg. No. 10324-154-84008) on at least one occasion in 2018 and 2019, constitutes two unlawful acts, pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

47. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Civil Penalty

48. 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 **\$24,240**. 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.

49. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$24,240** civil penalty for the FIFRA violations by one of the following payment methods:

For checks sent by regular U.S. Postal Service mail, 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 979077
St. Louis, Missouri 63197-9000

The check must note "Biosolutions LLC" and the docket number of this CAFO.

For checks sent by express mail, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note "Biosolutions LLC" and the docket number of this CAFO.

For electronic funds transfer, using electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state “Biosolutions LLC” and the docket number of this CAFO.

For Automated Clearinghouse (ACH) also known as REX or remittance express, using ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state “Biosolutions LLC” and the docket number of this CAFO.

For on-line payment, to pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

50. 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

Nora Wells (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
wells.nora@epa.gov

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

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

52. If Respondent does not pay timely the civil penalty, 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. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

53. 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

54. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: wells.nora@epa.gov (for Complainant), and invoices@biosolutionsllc.com (for Respondent).

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

56. 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.

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

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

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

60. 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.

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

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

**In the Matter of:
Biosolutions LLC**

Biosolutions LLC, Respondent

5/5/2023

Date



Name: Mark J Lackner

Title: Operations Manager

Biosolutions LLC

**In the Matter of:
Biosolutions LLC**

United States Environmental Protection Agency, Complainant

MICHAEL
HARRIS

Digitally signed by
MICHAEL HARRIS
Date: 2023.05.09
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Michael D. Harris

Director

Enforcement and Compliance Assurance Division

In the Matter of:
Biosolutions LLC
Docket No.: FIFRA-05-2023-0012

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 COYLE Digitally signed by ANN
COYLE
Date: 2023.05.10
15:23:11 -05'00'

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