



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2017 MAR -9 AM 11:52

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: FIFRA-08-2017-0004

IN THE MATTER OF:

THE GROW DEPOT, INC.

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 9<sup>th</sup> DAY OF March, 2017.

Katherin E. Hall  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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HEARING CLERK

**In the Matter of:**

The Grow Depot, Inc.  
970 W. 104<sup>th</sup> Avenue  
Northglenn, Colorado 80234

**Respondent**

**Docket No.: FIFRA-08-2017-0004**

**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

**I. JURISDICTION**

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Respondent for violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.
2. The EPA is authorized to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against a Respondent who the EPA alleges has violated a requirement or prohibition of FIFRA.
3. The undersigned EPA officials enter into this Agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1). The Administrator of the EPA has delegated this authority under FIFRA to the signatories of this Agreement.
4. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
5. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the factual allegations in this Agreement.

**II. ALLEGATIONS**

6. Respondent, The Grow Depot, Inc. (Respondent), is a "person" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
7. Respondent's principal place of business is an "establishment," as defined by section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) of FIFRA, and is located at 970 West 104<sup>th</sup> Avenue, Northglenn, Colorado 80234.

8. Respondent is in the business of selling hydroponics, growing equipment and supplies.
9. At all times relevant to the alleged violations, the Respondent was a “distributor/seller” as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), of a “pesticide” as defined in FIFRA section 2(u), 7 U.S.C. § 136(u), and a “producer” as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).
10. By statute, “[t]he term ‘to distribute or sell’ means 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 ....” FIFRA section 2(gg), 7 U.S.C. § 136 (gg).
11. Under section 3(a) of FIFRA, 7 U.S.C. § 136(a), it is “unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered....”
12. 40 C.F.R. § 158.325 states in part, “the following information must be submitted on the materials used to produce the product: (1) For each active ingredient that is derived from an EPA-registered product: (i) The name of the EPA-registered product [and] (ii) The EPA registration number of that product.”
13. 40 C.F.R. § 167.3 states that the act of repackaging is considered to be pesticide production.
14. 40 C.F.R. § 167.20(a) states that “any establishment where a pesticidal product is produced must be registered with EPA.”
15. EPA is authorized to inspect establishments under FIFRA § 9(a), 7 U.S.C. § 136(g)(a) to verify that compliance records are being maintained under FIFRA § 8, 7 U.S.C. § 136(f).
16. 40 C.F.R. § 169.3(a) states, in part, any producer of any pesticide ... used in producing a pesticide which is subject to FIFRA shall, upon request of a FIFRA pesticide inspector, ... furnish or permit such persons at all reasonable times to have access to and copy all records required to be maintained by this part....”
17. 40 C.F.R. § 169.3(b) states, in part, that any dealer who sells or offers for sale, delivers or offers for delivery any pesticide, device, or active ingredient used in producing a pesticide which is subject to FIFRA, shall, upon request by an FIFRA inspector, furnish at all reasonable times to have access to and copy all records showing the delivery or holding of such pesticide or active ingredient using in producing a pesticide.
18. On May 12, 2016, an inspector with the Colorado Department of Agriculture (CDA) conducted a pesticide inspection at Respondent’s facility and documented that Respondent had repackaged multiple small dropper bottles containing 0.5 or 1-ounce of liquid being offered for sale, labeled with the brand names of three different, well known pesticides: Avid 0.15 EC Miticide/Insecticide (Avid), EPA registration number 100-896; Forbid 4F Ornamental Insecticide/Miticide (Forbid); and Eagle 20 EW (Eagle), EPA registration number 62719-463.
19. On September 28, 2016, Respondent submitted to CDA documents (CDA Submittal) which included sales information for a fourth pesticide, Pylon Total Release Miticide-Insecticide (Pylon),

EPA registration number 499-544. The CDA Submittal indicated that Respondent repackaged the Pylon into smaller containers before it was sold.

20. Additionally, the CDA Submittal revealed that Respondent distributed and/or sold the repackaged Avid; Forbid; and Eagle.

### **III. VIOLATIONS**

21. Avid was repackaged into 0.5 or 1-ounce bottles. Repackaging constitutes pesticide production. Respondent is not an EPA registered pesticide producing establishment, and therefore violated FIFRA and 40 C.F.R. § 167.20(a) when it repackaged the Avid.
22. Forbid was repackaged into 0.5 or 1-ounce bottles. Repackaging constitutes pesticide production. Respondent is not an EPA registered pesticide producing establishment, and therefore violated FIFRA and 40 C.F.R. § 167.20(a) when it repackaged Forbid.
23. Eagle was repackaged into 0.5 or 1-ounce bottles. Repackaging constitutes pesticide production. Respondent is not an EPA registered pesticide producing establishment, and therefore violated FIFRA and 40 C.F.R. § 167.20(a) when it repackaged Eagle.
24. Pylon was repackaged into 0.5 or 1-ounce bottles. Repackaging constitutes pesticide production. Respondent is not an EPA registered pesticide producing establishment, and therefore violated FIFRA and 40 C.F.R. § 167.20(a) when it repackaged Pylon.
25. Respondent's establishment distributed and/or sold Avid, which was unregistered, and therefore violated section 3(a) of FIFRA, 7 U.S.C. § 136(a).
26. Respondent's establishment distributed and/or sold Forbid, which was unregistered, and therefore violated section 3(a) of FIFRA, 7 U.S.C. § 136(a).
27. Respondent's establishment distributed and/or sold Eagle, which was unregistered, and therefore violated section 3(a) of FIFRA, 7 U.S.C. § 136(a).
28. Respondent's establishment distributed and/or sold Pylon, which was unregistered, and therefore violated section 3(a) of FIFRA, 7 U.S.C. § 136(a).
29. EPA attempted to conduct a pesticide inspection at Respondents facility on October 24, 2016, but was refused entry by Respondent's employee. The employee told the EPA inspector that Respondent's manager and owner told the employee not to talk to the inspector, thus refusing an inspection authorized by FIFRA. Refusing the EPA inspector entry to conduct the inspection is a violation of 40 C.F.R. §§ 169.3(a) and (b).

### **IV. PAYMENT OF CIVIL PENALTY**

30. 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.

31. Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
32. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), the EPA proposes to assess a total civil penalty of \$27,500 against Respondent for the above-described violations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 1361(a), may be assessed by Administrative Order.
33. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a Final Order in this matter and agrees to pay the civil penalty of \$27,500 within thirty days of the effective date of the Final Order as follows:
  - a. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is considered to be the date processed by U.S. Bank, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
  - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The checks or other payments shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent accordingly as follows:

**Regular Mail:**

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

Federal Express, Airborne, or other commercial carrier:

US Bank  
Cincinnati Finance Center Box 979077                      Contact: Craig Steffen  
1005 Convention Plaza    513-487-2091  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**Wire Transfers:**

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33

33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**ACH (also known as REX or remittance express):**

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury Facility  
5700 Rivertech Court  
Riverdale, MD 20737  
US Treasury Contact Information:  
Randolph Maxwell: 202-874-7026  
Remittance Express (REX): 1-866-234-5681

**On-line Payment:**

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from [www.pay.gov](http://www.pay.gov).

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

34. At the same time that payment is made, notice that the payment has been made shall be provided to:

David Golden (8ENF-AT-TP)	and	Melissa Haniewicz (8RC)
Technical Enforcement Program		Regional Hearing Clerk
U.S. EPA Region 8		U.S. EPA Region 8
1595 Wynkoop St.		1595 Wynkoop St.
Denver, CO 80202-1129		Denver, CO 80202-1129

35. If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.
36. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).

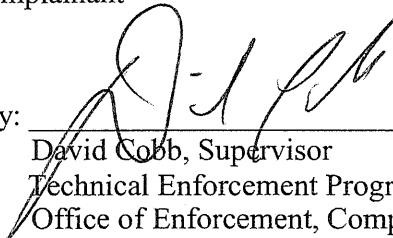
37. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

#### **V. TERMS AND CONDITIONS**

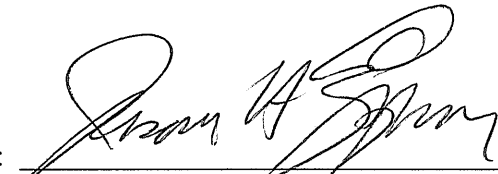
38. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.
39. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
40. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.
41. Each party shall bear its own costs and attorney fees in connection with this matter.
42. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this Agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
43. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full payment of the civil penalty shall resolve Respondent's liability for civil penalties for the violations alleged herein.
44. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
45. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8,  
Office of Enforcement, Compliance  
and Environmental Justice  
Complainant**

Date: 3/8/17

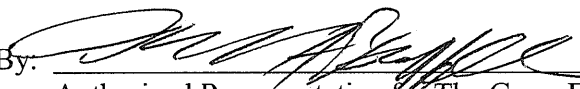
By:   
David Cobb, Supervisor  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 3/8/17

By:   
James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

**The Grow Depot  
Respondent**

Date: 3/7/17

By:   
Authorized Representative for The Grow Depot

Printed Name: KENTH BENEFAYK



**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT AND FINAL ORDER** in the matter of **THE GROW DEPOT, INC.; DOCKET NO.: FIFRA-08-2017-0004** was filed with the Regional Hearing Clerk on March 9, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Mark Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on March 9, 2017, to:

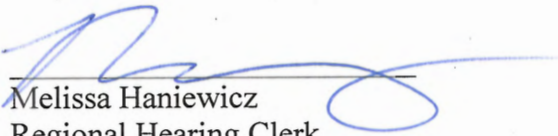
Respondent

Keith Bergfalk  
The Grow Depot, Inc.  
970 W. 104<sup>th</sup> Avenue  
Northglenn, CO 80234

And emailed to:

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

March 9, 2017



Melissa Haniewicz  
Regional Hearing Clerk

