

In re: AFCO C&S, LLC
EPA Docket No. FIFRA-03-2019-0132

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:)	
)	
AFCO C&S, LLC)	
5121 Coffey Avenue)	
Chambersburg, PA 17201)	
)	
RESPONDENT.)	
)	

U.S. EPA-REGION 3-RHC
FILED-26SEP2019am10:41

U.S. EPA Docket Number
FIFRA-03-2019-0132

CONSENT AGREEMENT

1. This Consent Agreement is entered into by the Director for the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and AFCO C&S, LLC (“Respondent” or “AFCO”), pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 14(a) of FIFRA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under Section 14(a) of FIFRA (or the “Act”).
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.
3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(1).

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5, above, the Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it 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 canceled or suspended unless otherwise authorized by EPA under FIFRA.
13. Pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.
14. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term "pest" includes fungus, bacteria and "other microorganisms." The regulations implementing FIFRA give further guidance on what constitutes a pesticidal purpose, stating that a substance is considered to be intended for a pesticidal purpose, and

thus to be a pesticide requiring registration, if, among other things, the person who distributes or sells the substance “claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a pesticide.” 40 C.F.R. § 152.15(a)(1).

15. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), makes it unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration under Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
16. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.
17. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as being “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
18. Pursuant to Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), the term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
19. Pursuant to Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), the term “labeling” means all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide or device.
20. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term “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.
21. On June 20, 2016, representatives of the EPA, duly authorized to conduct inspections under the authorities of Section 8 and Section 9 of FIFRA, 7 U.S.C. § 136f and § 136g, conducted an inspection at Respondent’s registered establishment located at 800 Development Avenue, Chambersburg, Pennsylvania (EPA Establishment Registration No. 833-PA-1).
22. As a result of the June 20, 2016 inspection and other information gathering activities, EPA collected information pertaining to the following twelve (12) products which have been

distributed or sold by Respondent with language on letters of guarantee, technical data sheets, and/or webpages on Respondent's website, identified in parentheses:

- a. **0252 CHLORILIZER RTU** (“will reduce the number of bacteria on hard, non-porous surfaces”);
- b. **AFCO 2547** (“can be used as . . . an antimicrobial intervention on dry floors”, “specifically designed for use as an antimicrobial intervention on floors”, “Dry application: For antimicrobial intervention, spread AFCO 2547 on floor. Completely cover the surface with the 2547 granules to a depth of 1/8-1/4 inch”, “Floor Cleaner/Sanitizer”);
- c. **2549 AFCO FCN** (“can be used as . . . an antimicrobial intervention on dry floors”, “specifically designed for use as an antimicrobial intervention on floors”, “Its[sic] deodorizes floors by eliminating the odor causing bacteria”, “Dry application: For antimicrobial intervention, spread AFCO 2549 FCN on floor. Completely cover the surface with the 2549 granules to a depth of 1/8-1/4 inch”);
- d. **AFCO 4347 DRAIN VIGIL RINGS** (“is intended for use in sewage and/or drain lines to control bacteria growth”, “AFCO Drain Vigil Ring . . . is also recommended to control algae . . . in air conditioner condensate sumps”, “Conditioners: Place Drain Vigil Ring in an area where the condensate will flow around the donut. The donut will slowly dissolve and release quat into the system, resulting in . . .algae prevention”);
- e. **AFCO 4348 DRAIN VIGIL** (“is intended for use in sewage and/or drain lines to control bacteria growth”, “AFCO Drain Vigil . . . is also recommended to control algae . . .in air conditioner condensate sumps”, “Conditioners: Place Drain Vigil in an area where the condensate will flow around the block. The block will slowly dissolve and release quat into the system, resulting in . . .algae prevention”);
- f. **AFCO 4409 BIOREM CD20** (“is a treatment specifically intended for the curative and preventative elimination of the biofilms. Recommended for open plant cleaning, used to complement of[sic] Enzyfoam, this single association of (2) products makes it possible to eliminate the biofilms and guarantee perfect hygiene”, “prevent/eliminate/delay recurrence of biofilms”);
- g. **AFCO 8086 BRIGADE FLC-41** (“contains powerful oxidizing agents known to kill harmful microorganisms”, “For use as a floor cleaner/sanitizer to reduce biofilms, after normal cleaning and before sanitizing, apply a thin layer of Brigade over the floor

surface, thoroughly wet the floor and scrub the solution into the floor. Allow a contact time of 10-15 minutes. Rinse thoroughly with potable water and sanitize in the normal manner”);

- h. AFCO 8110 QUAT RINGS** (“is intended for use as a controlled release antimicrobial agent for drains”, “are used in drains, condensate trays, troughs and drop pans and provide controlled release of antimicrobial agents to minimize germs in these areas of high microbial populations, thus improving the overall cleanliness of the plant environment”);
 - i. AFCO 9534 SWEET TREAT** (“is a concentrated liquid chill water treatment used to prevent scale, corrosion, and biofouling in ice bank and sweet water systems. AFCO 9534 Sweet Treat contain silica and other inhibitors combined with an antimicrobial agent for bio-control”);
 - j. AFCO 4410 MICRO-KLEEN L** (“can be accurately and easily controlled by the use of automatic dispensing and is effective in the removal of biofilm, proteinaceous soil, and fatty soils from membrane surfaces when used as part of an overall program”);
 - k. AFCO QX, EPA Reg. No. 833-10** (“can also be used to control odors in drains caused by an accumulation of biofilm and other organic contaminants. AFCO QX also helps remove biofilms and other organic matter which can plug drains or cause them to run slowly”); and
 - l. MYACIDE GA25, EPA Reg. No. 33753-26** (“Removes established biofilm and inhibits its re-growth”).
23. The language on letters of guarantee, technical data sheets, and/or webpages on Respondent’s website identified in parentheses for each of the ten (10) products identified in paragraphs 22.a. through 22.j., above, claim, state, or imply (by labeling or otherwise) that each of the ten (10) products can or should be used as a pesticide.
24. The ten (10) products described in paragraphs 22.a. though 22.j., above, are not registered with EPA as pesticides nor have such products ever been so registered as pesticides with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

25. The two (2) products described in paragraphs 22.k. and 22.l., above, are each registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
26. On July 13, 2018, EPA issued a Stop Sale, Use or Removal Order (“Order”) (Docket No. FIFRA-03-2018-0117SS) to AFCO pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136k(a), which required the immediate cessation of all sales and distribution of the twelve (12) products identified in Paragraph 22.a.-l., above.
27. On March 4, 2019, EPA issued an Order Modification letter allowing AFCO to recommence sale of one product subject to the Order: AFCO QX, EPA Registration No. 833-10, also referred to by Respondent as “AFCO 4310”, as described in Paragraph 22.k., above.

COUNT 1

(Sale and distribution of products with pesticidal claims)

28. The allegations contained in Paragraphs 1 through 27 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
29. AFCO is a Commonwealth of Pennsylvania limited liability company headquartered at 5121 Coffey Avenue, Chambersburg, Pennsylvania, and is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
30. Respondent is and, at all times relevant to this Order, was the owner or operator of an establishment located at 800 Development Avenue, Chambersburg, Pennsylvania (the “Facility”).
31. From at least January 1, 2015 through August 9, 2018, Respondent allegedly sold or distributed, on at least 26 separate occasions, **0252 CHLORILIZER RTU** that was not registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
32. From at least January 1, 2015 through August 9, 2018, Respondent allegedly sold or distributed, on at least 8 separate occasions, **AFCO 4347 DRAIN VIGIL RINGS** that was not registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

33. From at least January 1, 2015 through August 9, 2018, Respondent allegedly sold or distributed, on at least 31 separate occasions, **AFCO 4348 DRAIN VIGIL** that was not registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
34. From at least January 1, 2015 through August 8, 2018, Respondent allegedly sold or distributed, on at least 19 separate occasions, **AFCO 4409 BIOREM CD20** that was not registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
35. From at least January 1, 2015 through August 8, 2018, Respondent allegedly sold or distributed, on at least 6 separate occasions, **AFCO 8086 BRIGADE FLC-41** that was not registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
36. From at least January 1, 2015 through August 8, 2018, Respondent allegedly sold or distributed, on at least 228 separate occasions, **AFCO 8110 QUAT RINGS** that was not registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
37. From at least January 1, 2015 through August 8, 2018, Respondent allegedly sold or distributed, on at least 22 separate occasions, **AFCO 9534 SWEET TREAT** that was not registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
38. From at least January 1, 2015 through August 9, 2018, Respondent allegedly sold or distributed, on at least 574 separate occasions, **AFCO 2547** that was not registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
39. From at least January 1, 2015 through August 9, 2018, Respondent allegedly sold or distributed, on at least 117 separate occasions, **2549 AFCO FCN** that was not registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
40. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the products described in paragraphs 31 through 39, above, constitutes at least 1,031 violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 2

(Sale and distribution of a registered pesticide whose claims differ from claims made in connection with its registration under Section 3 of FIFRA)

41. The allegations contained in Paragraphs 1 through 40 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

42. The language on respective letters of guarantee, technical data sheets and/or webpages on Respondent's website identified in parentheses for the pesticide **MYACIDE GA25, EPA Reg. No. 33753-26**, described in paragraphs 22.l., above, were claims made as a part of its distribution or sale that substantially differed from any claims made as part of the statements required in connection with its registration under Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
43. From at least January 1, 2015 through August 9, 2018, Respondent allegedly sold or distributed, on at least 5 separate occasions, the pesticide **MYACIDE GA25, EPA Reg. No. 33753-26**, as described in paragraphs 22.l., above, with claims made as a part of its distribution or sale that substantially differed from any claims made as part of the statements required in connection with its registration under Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
44. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the pesticide **MYACIDE GA25, EPA Reg. No. 33753-26**, as described in paragraphs 42 and 43, above, with claims made as a part of its distribution or sale that substantially differed from any claims made as part of the statements required in connection with its registration under Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), constitutes at least 5 violations of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

COUNT 3

(Sale and distribution of a misbranded pesticide)

45. The allegations contained in Paragraphs 1 through 44 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
46. The pesticide **AFCO QX, EPA Reg. No. 833-10**, described in paragraph 22.k., above, is registered to Respondent under Section 3 of FIFRA.
47. From at least January 1, 2015 through October 4, 2018, the technical data sheet used by Respondent for the pesticide **AFCO QX, EPA Reg. No. 833-10**, described in paragraph 22.k., above, identified the name of the product exclusively as AFCO 4310.
48. From at least January 1, 2015 through October 4, 2018, the letters of guarantee and the webpages on Respondent's website identified the name of the pesticide as AFCO 4310 as well as its EPA accepted name, **AFCO QX, EPA Reg. No. 833-10**.

49. From at least January 1, 2015 through August 9, 2018, Respondent allegedly sold or distributed, on at least 41 separate occasions, the pesticide **AFCO QX, EPA Reg. No. 833-10** by using the false or misleading brand name AFCO 4310 to identify the product.
50. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the misbranded pesticide **AFCO QX, EPA Reg. No. 833-10**, as described in paragraphs 47 through 49, above, constitutes at least 41 violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

CIVIL PENALTY

51. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **One Million Four Hundred Eighty-Nine Thousand Dollars (\$1,489,000.00)** which Respondent shall be liable to pay in accordance with the terms set forth below.
52. Respondent has asserted that it will not be able to pay the entire civil penalty amount in full within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered without experiencing undue financial hardship. As a result, the Respondent has agreed to pay the civil penalty in the amount of **One Million Four Hundred Eighty-Nine Thousand Dollars (\$1,489,000.00)** in twelve (12) equal monthly installments with interest at the rate of 1% per annum on the outstanding principal balance according to the following schedule:
 - 1st payment is due within 30 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$125,306.84;
 - 2nd payment is due within 60 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$125,204.85;
 - 3rd payment is due within 90 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$125,102.86;
 - 4th payment is due within 120 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$125,000.88;
 - 5th payment is due within 150 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$124,898.89;

6th payment is due within 180 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$124,796.91;

7th payment is due within 210 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$124,694.92;

8th payment is due within 240 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$124,592.93;

9th payment is due within 270 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$124,490.95;

10th payment is due within 300 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$124,388.96;

11th payment is due within 330 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$124,286.98; and

12th payment is due within 360 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$124,188.99.

53. Under this proposed repayment schedule, the Respondent will pay the civil penalty of \$1,489,000.00 plus interest of \$7,954.96 as further outlined in the chart below:

Payment	Principal	Interest	Payment Amount Due
1	\$124,083.00	\$1,223.84	\$125,306.84
2	\$124,083.00	\$1,121.85	\$125,204.85
3	\$124,083.00	\$1,019.86	\$125,102.86
4	\$124,083.00	\$917.88	\$125,000.88
5	\$124,083.00	\$815.89	\$124,898.89
6	\$124,083.00	\$713.91	\$124,796.91

7	\$124,083.00	\$611.92	\$124,694.92
8	\$124,083.00	\$509.93	\$124,592.93
9	\$124,083.00	\$407.95	\$124,490.95
10	\$124,083.00	\$305.96	\$124,388.96
11	\$124,083.00	\$203.98	\$124,286.98
12.	\$124,087.00	\$101.99	\$124,188.99
TOTAL:	\$1,489,000.00	\$7,954.96	\$1,496,954.96

54. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), which requires EPA to take into account the appropriateness of such penalty to the size of the business of the person charged, the effect on the person’s ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s *FIFRA Enforcement Response Policy*, dated December 2009 (“ERP”), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.
55. Payment of the civil penalty amount, and any associated interest, administrative fee, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include a reference to Respondent’s name and address, and the Docket Number of this action, *i.e.*, **FIFRA-03-2019-0132**;
 - b. All checks shall be made payable to “**United States Treasury**”;
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

In re: AFCO C&S, LLC
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U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent within one week following payment to:

Louis Ramalho (3RC40)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Ramalho.Louis@epa.gov

56. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, any failure by Respondent to make timely payment or to comply with the conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
57. The first payment of the civil penalty is due and payable within thirty (30) calendar days following receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
58. INTEREST: In accordance with 40 C.F.R. § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek

to recover interest on any outstanding amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).

59. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of any overdue debts will be charged and assessed monthly throughout the period any debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on any unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
60. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
61. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

62. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
63. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are

aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

64. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief that it currently is complying with applicable provisions of FIFRA and its implementing regulations.

OTHER APPLICABLE LAWS

65. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of FIFRA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

66. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

67. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

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EFFECTIVE DATE


68. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

69. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

For Respondent:

Date: 9/19/2019




AFCO C&S, LLC
Michael Hinkle
President

In re: AFCO C&S, LLC
EPA Docket No. FIFRA-03-2019-0132

For the Complainant:

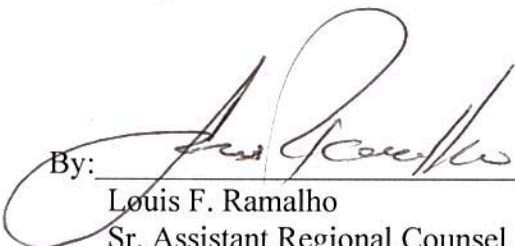
After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: SEP 25 2019

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 9/23/2019

By: 
Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA – Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:)
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AFCO C&S, LLC)
5121 Coffey Avenue)
Chambersburg, PA 17201)
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RESPONDENT.)
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U.S. EPA-REGION 3-RHC
FILED-26SEP2019AM10:41

U.S. EPA Docket Number
FIFRA-03-2019-0132

FINAL ORDER

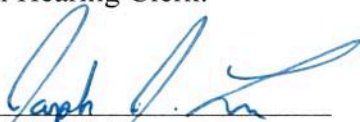
The Complainant, the Director for the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III and Respondent AFCO C&S, LLC have executed a document entitled, "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth fully herein.

WHEREFORE, pursuant to the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **One Million Four Hundred Eighty-Nine Thousand Dollars (\$1,489,000.00)** in accordance with the payment provisions set forth in the attached Consent Agreement, including payment of any applicable interest, and complying with each of the additional terms and conditions as specified in the attached Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA, and the regulations promulgated thereunder.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the CAFO is filed with the EPA Regional Hearing Clerk.

Date: Sept 26, 2019



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)
)
) Docket No. FIFRA-03-2019-0132
AFCO C&S, LLC)
)
) Proceeding under Section 14(a) of FIFRA
)
RESPONDENT.)

CERTIFICATE OF SERVICE

I certify that on SEP 26 2019, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **UPS, Overnight Mail**, to:

Gary Steinbauer
Attorney at Law
Two Gateway Center
Pittsburgh, PA 15222

Copy served via **Hand Delivery or Inter-Office Mail** to:

Louis F. Ramalho
Sr. Assistant Regional Counsel
Office of Regional Counsel (3RC40)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: SEP 26 2019

Beris Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 1Z A43 F71 01941 S 2039