

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**REGION 4**

In the Matter of:

Performance PC's, Inc.

Respondent.

Docket No. **FIFRA-04-2023-0707(b)**

CONSENT AGREEMENT**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act), as amended, 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18 of the *Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.) Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions of FIFRA and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency (EPA) to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
5. Respondent is Performance PC's, Inc., a company based in the State of Florida with its principal place of business located at 1701 Robert J. Conlan Boulevard NE, Suite 5, Palm Bay, Florida 32905.

III. GOVERNING LAW

6. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), to mean 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).
7. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
8. The term “to distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or to release for shipment.
9. The term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
10. Pursuant to 40 C.F.R. § 152.25(a), an article or substance treated with, or containing, a pesticide to protect the article or substance itself, has been determined to be of a character not requiring regulation under FIFRA, and is therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified. This is known as the “treated articles exemption.”
11. The EPA’s Pesticide Registration Notice (PRN) 2000-1 clarifies the scope of the treated articles exemption and explains that products for which claims are made that go beyond stating that the product is treated with a pesticide to protect the product itself from degradation and that make public health claims that the product can protect users against pathogens, are not eligible for the treated articles exemption.
12. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
13. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), civil penalties for violations of FIFRA may be assessed by administrative order.

IV. FINDINGS OF FACTS

14. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
15. On March 18, 2021, EPA Region 4 staff reviewed Respondent’s website, located at <https://www.performance-pcs.com>, and observed various products being offered for sale. The website included a description of the products and/or claims about the capabilities of the products. These products included:

Product	Description and/or Claims
XSPC EC6 Product Biocide	<p>“EC6 Protect - Biocide is a highly effective slow release, long life biocide. Simply add to de-ionised [sic] water, purified water, or coolant for years of protection against bacterial growth and algae. EC6 Protect can be used in [a] new system to protect against biological growth, or added to an existing system to neutralise [sic] bacteria an [sic] algae.”</p>
Mayhems Biocide Inhibitor	<p>“Mayhems Biocide+ is a Broad Spectrum, Highly Concentrated, UV-C Blocker that is [a] Non-Foaming microbicide. It is based on a concept of Isothiazolone...”</p> <p>“It combats al [sic] huge range of Fungi, Algae and Negative Bacteria and Microorganisms over a wide pH spectrum.”</p>
Mayhems Biocide Extreme	<p>“Mayhems Biocide Extreme is the Ultimate Steriliser [sic] for performance water cooling systems. It prevents contamination in the water cooling system...”</p> <p>“Mayhems Biocide Extreme Kills Green water, Blue-Green algae, slime, scum, mould [sic] spores and all types of Green algae on contact.”</p> <p>“Highly effective in preventing the build up of bio-films in PC water cooling.”</p> <p>“Mayhems Biocide Extreme gives a 99.9% reduction of the species listed below within three hours.”</p> <p>“Legionella pneumophila (Legionnaires Disease), Pseudomonas aeruginosa, Staphylococcus, Micrococcus luteus, Streptococcus agalactiae, Escherichia coli.”</p>
EK-CryoFuel Premixes	<p>“It carries the essential synergistic corrosion inhibitors and biological inhibitors – thus promoting long and safe operational life for your liquid cooling [sic] products...”</p> <p>“This coolant also contains scale and biological inhibitors to help prevent fouling”</p> <p>“Do not add any biocides to EK CryoFuel as the product already includes such additives!”</p>
Mayhems XT-1 Nuke Coolant Concentrates	<p>“Mayhems XT-1 contains all the inhibitors and biocides you need and requires nothing adding [sic] such as biocide or silver kill coils.”</p>
Mayhems Non-Stain Dyes	<p>“Mayhems non stain dyes contain a biocide...”</p>
UFO Technologies Ultra-Chillz Coolants (various volumes and colors)	<p>“They all come complete with The [sic] best Biocides...”</p> <p>“These are the same inhibitors and biocides use [sic] in Cryo-Chillz 3D coolant line so the Ultra-Chillz Opaques will offer the same amazing protection against algae and corrosion.”</p>

UFO Technologies Event Horizon Full System Cleaner/Prep Solution	“Includes biocide”
--	--------------------

16. The above-referenced descriptions of the listed products and/or claims about the capabilities and intended purposes of the products on Respondent’s website indicate that the products either contained a pesticide or were advertised as a pesticidal substance (e.g., biocides and sterilizers) intended for a pesticidal purpose to prevent, destroy, repel, or mitigate pests, including bacteria, mold, fungi, algae, and biofilm. The product descriptions and claims do not state the products were treated with a pesticide solely for the purpose of protecting the products themselves from degradation. As such, the products do not qualify for the treated articles exemption pursuant to 40 C.F.R. § 152.25(a), but are, instead, pesticides that are required to be registered pursuant to Section 3 of FIFRA. Respondent distributed or sold, through offering for sale, the unregistered pesticides listed in the table above.

V. ALLEGED VIOLATIONS

17. The EPA alleges that Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling, through offering for sale, unregistered pesticides as described in Section IV above, and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
18. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with 40 C.F.R. Part 19, Adjustments of Civil Monetary Penalties for Inflation, authorizes the assessment of a civil penalty.

VI. STIPULATIONS

19. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
20. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- (a) admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) consents to the conditions specified in this CAFO;
 - (e) waives any right to contest the alleged violations of law set forth in Section V (Alleged Violations) of this CAFO; and
 - (f) waives its rights to appeal the Final Order accompanying this CAFO.

21. For the purpose of this proceeding, Respondent:
- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - (c) waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of FIFRA and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
 - (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept or issue this CAFO; and
 - (f) agrees to comply with the terms of this CAFO.
22. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

23. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **THIRTY-FIVE THOUSAND, NINE HUNDRED DOLLARS (\$35,900.00)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.
24. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

If paying by ACH, Respondent shall remit payment to:

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, Maryland 20737
Contact: Craig Steffen (513) 487-2091
REX (Remittance Express): 1-866-234-5681

25. Respondent shall send proof of payment within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov

and

Deborah Ortiz
ortiz.deborah@epa.gov

26. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. **FIFRA-04-2023-0707(b)**.
27. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on

debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:

- (a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within thirty (30) days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (30) days of the Effective Date of this CAFO from the date that the EPA first mails notice to the Respondent, interest will continue to accrue on any unpaid portion until the unpaid portion of the penalty and accrued interest is paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b), and 40 C.F.R. § 13.11(a).
- (b) Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
- (c) Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

28. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, pursuant to Section 14(a)(5) of FIFRA 7 U.S.C. § 136l(a)(5), the EPA may:

- (a) refer the debt to a credit reporting agency or a collection agency pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) (*see* 40 C.F.R. §§ 13.13 and 13.14);
- (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H);
- (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (*see* 40 C.F.R. § 13.17); and/or
- (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).

29. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

30. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
31. In accordance with 40 C.F.R. § 22.18(c), full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall satisfy the requirements of this CAFO; but shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
32. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 14(a) of the Act, 42 U.S.C. § 136l(a), as well as criminal sanctions as provided in Section 14(b) of the Act, 42 U.S.C. § 136l(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
33. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
34. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent hazard as provided under the Act.
35. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
36. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
37. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
38. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
39. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
40. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.

41. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
42. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
43. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
44. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

45. This CAFO shall become effective upon execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

[Remainder of Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement In the Matter of **Performance PC's, Inc.**, Docket Number **FIFRA-04-2023-0707(b)**, Is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Henry W. Baron Date 05/02/2023
Signature _____

Printed Name: Henry W. Baron

Title: President

Address: 1701 Robert J. Coinlin Blvd. NE, Suite 5
Palm Bay, FL 32905

The foregoing Consent Agreement In the Matter of **Performance PC's, Inc.**, Docket Number **FIFRA-04-2023-0707(b)**, Is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

for

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Performance PC's, Inc.,

Respondent.

Docket No. **FIFRA-04-2023-0707(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **Performance PC's, Inc.**, Docket No. **FIFRA-04-2023-0707(b)**, were filed and copies of the same were emailed to the Parties as indicated below.

Via email to all Parties at the following email addresses:

To Respondent: Alan J. Sachs Esq.
 Beveridge & Diamond PC
 (202) 789-6029
 asachs@bdlaw.com

To EPA: Deborah Ortiz
 Case Development Officer
 ortiz.deborah@epa.gov

 Robert Caplan
 Senior Attorney
 caplan.robert@epa.gov

Shannon L. Richardson, Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov