

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2023-0013
)	
One-Derings Lavender Farm LLC)	Proceeding to Assess a Civil Penalty
Clarksville, Ohio)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
Respondent.)	
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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. § 136l(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, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondent is One-Derings Lavender Farm LLC, a company doing business in the State of Ohio, with a place of business located at 2195 South Clarksville Road, Clarksville, Ohio 48113.

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 to 136y, and the regulations promulgated thereunder.

Statutory and Regulatory Background

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

11. 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.”

12. 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.” See also 40 C.F.R. § 152.3.

13. 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.” See also 40 C.F.R. § 152.3.

14. 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. See also 40 C.F.R. § 152.5.

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

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

17. 40 C.F.R. § 152.15(a) states, in pertinent part, that no person may distribute or sell any pesticide product that is not registered under FIFRA. It further states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

18. 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.

EPA Factual Allegations and Alleged Violations

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

20. At all times relevant to the CAFO, One-Derings owned or operated a place of

business located at 2195 South Clarksville Road, Clarksville, Ohio 48113 (the Facility).

21. On or about November 30, 2021, two inspectors employed with the Ohio Department of Agriculture (ODA) conducted an inspection at the One-Derings facility.

Unregistered Pesticide Allegations

22. During the inspection, ODA collected labels, production records, and sales records for the product “Lavender Bug Spray”.

23. The label affixed to bottles of the “Lavender Bug Spray” identified the following, among other things:

- a. “Directions: Spray as needed for bug repellent. Can be used on clothes. Test on small area of skin before using it in large areas.”
- b. “Active Ingredients: Lemongrass oil, rosemary oil, peppermint oil, citronella oil, geranium oil, cedarwood oil.”
- c. “Other Ingredients: caprylic/capric triglyceride, lauric acid, capric acid, lavender essential oil, fragrance.”

24. At all times relevant to the CAFO, “Lavender Bug Spray” was a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. At all times relevant to the CAFO, “Lavender Bug Spray” was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

Counts 1-15

Sale or Distribution of Unregistered Pesticide “Lavender Bug Spray”

26. Between July 17, 2021 and August 13, 2021, Respondent distributed or sold an unregistered pesticide, “Lavender Bug Spray”, on at least 15 separate occasions.

27. Respondent’s distribution or sale of an unregistered pesticide constitutes an

unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

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

Civil Penalty

29. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(4), Complainant determined that an appropriate civil penalty to settle this action is \$1,400. In determining the penalty amount, Complainant considered 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.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,400 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," by regular U.S. Postal Service mail to:

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

If sending the payment by express mail, then send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

The check must note "One-Derings LLC" and the docket number of this CAFO.

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.

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

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
R5hearingclerk@epa.gov

Emma Gloekler (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
Gloekler.Emma@epa.gov
and
R5lecab@epa.gov

Logan Glasenapp (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
Glasenapp.Logan.M@epa.gov

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

33. 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.

34. 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

35. The parties consent to service of this CAFO by e-mail at the following valid e-mail

addresses: Glasenapp.Logan.M@epa.gov (for Complainant), and onederings@yahoo.com (for Respondent).

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

37. 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 violation of law.

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

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

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

41. 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.

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

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

One-Derings Lavender Farm LLC, Respondent

6/10/23
Date

Kim Benz
Ms. Kim Benz
Partner
One-Derings Lavender Farm LLC

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2023.06.13
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Michael D. Harris
Director
Enforcement and Compliance Assurance Division

In the Matter of:
One-Derings Lavender Farm LLC
Docket No.: FIFRA-05-2023-0013

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: 2023.06.13
15:44:06 -05'00'

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