

FILED

22 JUN -7 AM 10:33

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

**1201 Elm Street, Suite 500
Dallas, Texas 75270**

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Maverick International, Ltd.,

Respondent.

§
§
§
§
§

Docket No. FIFRA-06-2022-0417

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and Maverick International, Ltd. ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. Complainant is the Director of Enforcement and Compliance Assurance Division of the EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Maverick International, Ltd., a company formed in the state of Texas and conducting business in the state of Texas.

Statutory and Regulatory Background

5. Congress enacted FIFRA, 7 U.S.C. 136 et. seq., in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States.

6. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides that “no person in any State may distribute or sell to any person any pesticide that is not registered under this subchapter.”

7. Section 25(b) of FIFRA, 7 U.S.C. § 136w(b), states that the Administrator may exempt from the requirements of FIFRA by regulation any pesticide which the Administrator determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

8. Pursuant to the regulation at 40 C.F.R. § 152.15, in relevant part, no person may distribute or sell any pesticide product that is not registered under the Act, except as provided in 40 C.F.R. §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. 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 (either by itself or in combination with any other substance) can or should be used as a pesticide.

9. Pursuant to the regulation at 40 C.F.R. § 152.25, the pesticides or classes of pesticides listed in 40 C.F.R. Section 152.25 have been determined to be of a character not requiring regulation under FIFRA, and are therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified.

10. The regulation at 40 C.F.R. § 152.25(f) identifies the conditions necessary to exempt “minimum risk” pesticides from FIFRA. Specifically, the products must:

- 1) contain only the active ingredients that are listed in 40 C.F.R. § 152.25(f)(1);
- 2) include only inert ingredients in listed paragraphs (f)(2)(i) through (iv) of the Section (see 40 C.F.R. § 152.25(f)(2));
- (3) bear a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient (see 40 C.F.R. § 152.25(f)(3)(i));
- (4) not bear claims either to control or mitigate microorganisms that pose a threat to human health, including claim to control insects carrying specific diseases (see 40 C.F.R. § 152.25(f)(3)(ii));
- (5) bear a label with the company name and contact information (see 40 C.F.R. § 152.25(f)(3)(iii)), and
- (6) not include any false and misleading statements, including those listed in 40 C.F.R. § 156.10(a)(5)(i) through (viii) (see 40 C.F.R. § 152.25(f)(3)(iv)).

11. If any of the conditions specified in Paragraph 9 above are not satisfied, the pesticide must be registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

12. Pursuant to the regulation at 40 C.F.R. § 152.25(f)(3)(ii), for a product to be exempted under 40 C.F.R. § 152.25, the product must not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease.

13. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

14. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. 136j(a)(1)(E), provides that it is unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

15. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, *inter alia*, that a pesticide is 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.

16. Pursuant to the regulation at 40 C.F.R. § 156.10(a)(5), false and misleading statements that can cause a pesticide to be misbranded include, *inter alia*:

- a. A false or misleading statement concerning the effectiveness of the pesticide or device (40 C.F.R. § 156.10(a)(5)(ii));
- b. A false or misleading comparison with other pesticides or devices (40 C.F.R. § 156.10(a)(5)(iv));
- c. Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the federal government (40 C.F.R. § 156.10(a)(5)(v)); or

- d. Claims as to the safety of the pesticide or its ingredients, including statements such as “safe,” “nonpoisonous,” “noninjurious,” “harmless” or “nontoxic to humans and pets” with or without such a qualifying phrase as “when used as directed” (40 C.F.R. § 156.10(a)(5)(ix)).

17. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 for each offense. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$20,528 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 23, 2020.

Definitions

18. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

19. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

20. The regulations found at 40 C.F.R. § 152.15(a)(1) and (b) further defines the term “pesticide” as any substance intended for a pesticidal purpose, and thus 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; or the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purpose.

21. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

22. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” to mean 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.

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

24. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as all labels and all other written, printed, or graphic matter – (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide.

EPA Findings of Fact and Conclusions of Law

25. Respondent is, and at all times referred to herein was, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

26. This Order refers to Maverick International, Ltd. and all its divisions, offices, and subsidiaries collectively as “Respondent.”

27. Respondent distributes a product called “BioErase Antimicrobial Surface Wipes” (“the Product”) for use as a broad-spectrum antimicrobial cleaner.

28. The Product is a “pesticide” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it is a substance intended for preventing, destroying, repelling, or mitigating pests, i.e. viruses, bacteria, and fungi.

29. The Product is a “pesticide” as that term is further defined by 40 C.F.R. § 152.15(a)(1), which requires registration pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, because it is a substance intended for pesticidal purposes for which Respondent stated by the Product’s labeling when distributing and selling the Product that the Product can or should be used as a pesticide, i.e. “BioErase is a broad-spectrum antimicrobial cleaner. Antimicrobial products kill or slow the spread of microorganisms. Microorganisms include bacteria, viruses, protozoans, and fungi.”

30. At the time the Product was distributed or sold by Respondent, the Product was not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

31. The Product’s label claims the Product is a minimum risk pesticide, that is exempt from FIFRA regulation and registration pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

32. Pursuant to the regulation at 40 C.F.R. § 152.25(f)(3), for a product to be a minimum risk pesticide exempted from FIFRA under 40 C.F.R. § 152.25, the Product must meet the required conditions.

33. The Product label bears claims that are not permitted under the conditions required for a product to be a minimum risk pesticide exempted from FIFRA regulation.

34. As referenced in Paragraph 9, pursuant to 40 C.F.R. § 152.25(f)(3)(ii), the product must not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control

insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease.

35. Labeling for the Product states, that the Product “Bioerase is a broad-spectrum antimicrobial cleaner. Antimicrobial products kill or slow the spread of microorganisms. Microorganisms include bacteria, viruses, protozoans, and fungi.”

36. The Product label claims referenced in Paragraph 34, are not permitted as the conditions for minimum risk pesticides do not allow for claims that control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses.

37. The Product does not comply with the conditions required for minimum risk pesticides, violating 40 C.F.R. § 152.25(f)(3).

38. Because the Product does not comply with the conditions required for minimum risk pesticides, the Product is not a minimum risk pesticide. The Product must be registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, and the distribution or sale of the unregistered Product was unlawful under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136(j)(1)(A).

39. Labeling for the Product states that the Product is an “EPA Exempted Product. This product is exempt from EPA Registration under minimal risks pesticides exemption FIFRA Section 25b.”

40. As aforementioned, the Product does not comply with the conditions required for minimum risk pesticides, thus is not a minimum risk pesticide and is not exempt from EPA Registration under minimum risks pesticides exemption FIFRA Section 25b.

41. The claim referenced in Paragraph 35 is a false or misleading statement and representation as defined under 40 C.F.R. § 156.10(a)(5), indicating that the Product was

misbranded as defined by Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and the distribution or sale of the Product is unlawful under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(j)(1)(E).

42. On or about September 2020, the EPA conducted an investigation of Respondent's compliance with FIFRA and the federal regulations promulgated thereunder (the "Investigation"). As part of the Investigation, the EPA requested, and Respondent provided documentation and information concerning Respondent's distribution of pesticidal products.

43. Beginning on or about July 20, 2020, Respondent distributed or sold the Product.

EPA Findings of Violation

44. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

45. Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder as follows:

Counts 1 – 35

Unlawful Distribution of an Unregistered Pesticide

46. 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 any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

47. Pursuant to the regulation at 40 C.F.R. § 152.25(f)(3), for a product to be a minimum risk pesticide exempted from FIFRA under 40 C.F.R. § 152.25, the Product must meet the required conditions.

48. Beginning on or about July 20, 2020, through on or about November 17, 2020, Respondent distributed the Product not in accordance with the required conditions of minimum risk pesticides pursuant to 40 C.F.R. § 152.25(f)(3).

49. Respondent distributed the unregistered product on thirty-five (35) occasions.

50. Each distribution of the Product not in accordance with the required conditions of minimum risk pesticides, the Product was not a minimum risk pesticide. The Product must be registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, and each distribution or sale of the unregistered Product was unlawful in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136(j)(1)(A).

Count 36

Unlawful Distribution or Sale of a Misbranded Pesticide

51. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

52. The labeling for the Product bared the following false or misleading statement:

- a. "EPA Exempted Product. This product is exempt from EPA Registration under minimal risks pesticides exemption FIFRA Section 25b."

Hereinafter the "Statement."

53. The Product was misbranded when bearing the Statement.

54. The misbranded Product was distributed or sold on thirty-five (35) occasions.

55. Each distribution or sale of the misbranded Product is a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

CONSENT AGREEMENT

56. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its right to appeal the Final Order accompanying this Consent Agreement.

57. Respondent consents to the issuance of this Consent Agreement and Final Order and consent for the purposes of settlement to the payment of the civil penalty specified herein.

58. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

59. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of eighty thousand, and six-hundred dollars (\$80,600.00), as set forth below.

60. Respondent shall pay the penalty within thirty (30) days of receiving notice of the effective date of the Final Order. Such payment shall identify Respondent by name and docket

number and shall be by certified or cashier's check made payable to the "United States Treasury"
and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

61. A copy of the check or other information confirming payment shall
simultaneously be sent to the following:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
vaughn.lorena@epa.gov; and

Justin Mullenix
Enforcement and Compliance Assurance Division
Waste Enforcement Branch
U.S. Environmental Protection Agency, Region 6
Mullenix.justin@epa.gov

62. Respondent understands that its failure to timely pay any portion of the civil
penalty may result in the commencement of a civil action in Federal District Court to recover the
full remaining balance, along with penalties and accumulated interest. In such case, interest shall
begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or
stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will
be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31
U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection
including processing and handling costs, and a non-payment penalty charge of six percent (6%)
per year compounded annually will be assessed on any portion of the debt which remains
delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

63. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the FIFRA or any other applicable law.

64. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

65. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

66. Full payment of the penalty proposed in this Consent Agreement 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 law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the FIFRA and regulations promulgated thereunder.

67. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

68. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

69. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

70. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

71. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

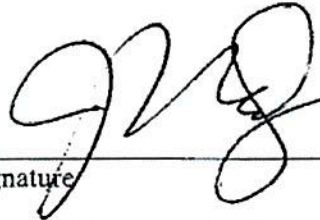
72. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: *pittman.lawrence@epa.gov*

To Respondent: *jwerner@rmqlawfirm.com*

RESPONDENT:
Maverick International, Ltd.

Date: 6/2/2022



Signature

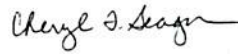
Jerry Nelson OR

Name

Partner

Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY



Digitally signed by
CHERYL SEAGER
Date: 2022.06.06 13:52:39
-05'00'

Cheryl T Seager
Director
Enforcement and
Compliance and Assurance
U. S. EPA, Region 6

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 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, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondents' (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

**THOMA
S RUCKI**

Digitally signed by THOMAS RUCKI
DN: c=US, o=U.S. Government,
ou=Environmental Protection
Agency, cn=THOMAS RUCKI,
0.9.2342.19200300.100.1.1=680010
03655804
Date: 2022.06.07 09:35:39 -05'00'

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

pittman.lawrence@epa.gov

Copy via Email to Respondent:

John Werner
Reaud, Morgan & Quinn, L.L.P.
jwerner@rmqlawfirm.com

**LAWRENCE
PITTMAN**

Digitally signed by
LAWRENCE PITTMAN
Date: 2022.06.07 12:51:03
-05'00'

Signed
Office of Regional Counsel
U.S. EPA, Region 6