



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 5**

**77 WEST JACKSON BOULEVARD**

**CHICAGO, IL 60604-3590**

**May 26, 2021**

VIA EMAIL ONLY

Mr. Daniel Bellehumeur  
Director of Quality, Compliance, and Technical Services  
PAK Technologies, Inc.  
7025 West Marcia Road  
Milwaukee, Wisconsin 53223

[dbellehumeur@paktech.com](mailto:dbellehumeur@paktech.com)

Consent Agreement and Final Order  
In the Matter of PAK Technologies, Inc.  
Docket Number **FIFRA-05-2021-0016**

Mr. Bellehumeur:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on May 26, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$34,017 is to be paid in the manner described in paragraphs 66-67 of the CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,  
**CLAUDIA**  
**NIESS**

Claudia Niess  
Enforcement Officer  
Pesticides and Toxics Compliance Section

Digitally signed by  
CLAUDIA NIESS  
Date: 2021.05.24 09:50:28  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

<b>In the Matter of:</b>	)	<b>Docket No.</b>
	)	
<b>PAK Technologies, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Milwaukee, Wisconsin</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
	)	<b>Act, 7 U.S.C. § 136l(a)</b>
	)	
<b>Respondent.</b>	)	
<hr/>	)	

**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 the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondent is PAK Technologies, Inc. (PAK), a corporation doing business in the State of Wisconsin.

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 and alleged violations 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.

**Statutory and Regulatory Background**

10. 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 FIFRA, except in certain circumstances which are not relevant to this case. *See also* 40 C.F.R. § 152.15.

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

12. Section 3(c)(1)(C), 7 U.S.C. § 136a(c)(1)(C), states that each applicant for registration of a pesticide shall file with the EPA a statement which includes a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use.

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

14. Section 2(q)(1)(F), 7 U.S.C. § 136(q)(1)(F), defines a pesticide as “misbranded” if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment. *See also* 40 C.F.R. 156.10(a)(5)(i).

15. Section 8(a), 7 U.S.C. § 136f(a), states the EPA may prescribe regulations requiring producers to maintain records of production of pesticides.

16. 40 C.F.R. § 169.2(a) of FIFRA states all producers of pesticides shall maintain records showing, among other things, the name of the pesticide produced along with its EPA registration number.

17. Section 12(a)(2)(B) of FIFRA, 7 U.S.C. § 136j(a)(2)(B), states it shall be unlawful for any person to refuse to maintain any records required by Section 8 of FIFRA.

18. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “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.”

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

20. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest,” in pertinent part, 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 EPA declares to be a pest under Section 25(c)(1) of FIFRA.

21. Section 2(u) of FIFRA, 7 U.S.C. § 136(u) defines “pesticide,” in pertinent part, as any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

22. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “producer” as the person who manufactures, prepares, compounds, propagates, or processes any pesticide.

23. 40 C.F.R. § 167.3 defines “produce” as “to manufacture, prepare, propagate, compound or process any pesticide, including ... to package, repackage, label, relabel, or otherwise change the container of any pesticide.”

24. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), states that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$7,500 for each offense that occurred after January 12, 2009 through November 2, 2015. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. Part 19, increased the amount that can be assessed to \$20,528 for each offense occurring after November 2, 2015 and assessed after December 23, 2020. See 85 Fed. Reg. 247 (December 23, 2020).

#### **Factual Allegations and Alleged Violations**

25. At all times relevant to the CAFO, PAK owned or operated a place of business located at 8000 W. Good Hope Road, Milwaukee, WI 53223-4520.

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

27. Respondent, PAK, is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

28. On or about June 3, 2019, an inspector employed by the EPA, Region 5, who is authorized to conduct inspection under FIFRA conducted an inspection at PAK's place of business.

#### **Barbicide Plus**

29. During the inspection, the inspector collected documentary evidence for **Barbicide Plus**.

30. The bin label for **Barbicide Plus** stated that the EPA registration number (Reg. No.) for the pesticide was 211-36-954.

31. **Barbicide Plus**, EPA Reg. No. 211-36-954, is not registered with the EPA.

32. The registration number on the bin label of **Barbicide Plus** indicates that the product contains a registered pesticide, **TRI-CEN**, EPA Reg. No. 211-36.

33. Therefore, **Barbicide Plus** is a pesticide.

34. On or about January 16, 2018, PAK distributed or sold **Barbicide Plus** to King Research (King).

#### **Barbicide, EPA Reg. No. 954-11**

35. During the inspection, the inspector observed production of **Barbicide**, EPA Reg. No. 954-11.

36. During the inspection, the inspector also observed that a portion of the batch of **Barbicide**, EPA Reg. No. 954-11, that was being produced was in a part of the warehouse where product is already bottled, labeled, and released for shipment.

37. **Barbicide**, EPA Reg. No. 954-11, is a pesticide.

38. On or about March 8, 2010, the registrant, King requested an amendment to its label of **Barbicide**, EPA Reg. No. 954-11.

39. On or about July 22, 2010, the EPA accepted the amendment with comments for **Barbicide**, EPA Reg. No. 954-11, which included:

*Under "Beauty/Barber Instruments and Tools" the label reads that implements and tools are to be pre-cleaned prior to "complete immersion for 10 minutes (or as required by local authorities)." The contact time for the product is no less than 10 minutes, and the statement in parentheses is not clear about this requirement. Change the statement to read, "complete immersion for 10 minutes (or more as required by local authorities)."*

40. On or about March 23, 2019, PAK distributed or sold **Barbicide**, EPA Reg. No. 954-11, to King with a label that did not include the required language "*complete immersion for 10 minutes (or more as required by local authorities).*"

41. On or about March 24, 2019, PAK distributed or sold **Barbicide**, EPA Reg. No. 954-11, to King with a label that did not include the required language "*complete immersion for 10 minutes (or more as required by local authorities).*"

42. On or about June 3, 2019, PAK released for shipment, **Barbicide**, EPA Reg. No. 954-11, with a label that did not include the required language "*complete immersion for 10 minutes (or more as required by local authorities).*"

#### **Production Records**

43. During the inspection, the inspector collected a production record for **Barbicide Plus**.

44. The production record for **Barbicide Plus** failed to include the EPA registration number for the pesticide.

#### **Count 1**

45. The preceding paragraphs are incorporated by reference.

46. On or about January 16, 2018, PAK distributed or sold an unregistered pesticide, **Barbicide Plus**, to King.



47. PAK's distribution or sale of **Barbicide Plus**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

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

### Count 2

49. The preceding paragraphs are incorporated by reference.

50. On or about May 23, 2019, PAK distributed or sold a misbranded pesticide (because the label accompanying it did not include the required directions for use), **Barbicide**, EPA Reg. No. 954-11, to King.

51. PAK's distribution or sale of **Barbicide**, EPA Reg. No. 954-11, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

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

### Count 3

53. The preceding paragraphs are incorporated by reference.

54. On or about May 24, 2019, PAK distributed or sold a misbranded pesticide (because the label accompanying it did not include the required directions for use), **Barbicide**, EPA Reg. No. 954-11, to King.

55. PAK's distribution or sale of **Barbicide**, EPA Reg. No. 954-11, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

56. PAK's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E),



subjects PAK to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

#### Count 4

57. The preceding paragraphs are incorporated by reference.

58. On or about June 3, 2019, PAK released for shipment a misbranded pesticide (because the label accompanying it did not include the required directions for use), **Barbicide**, EPA Reg. No. 954-11.

59. PAK's release for shipment of **Barbicide**, EPA Reg. No. 954-11, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

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

#### Count 5

61. The preceding paragraphs are incorporated by reference.

62. On or about June 3, 2019, the inspector collected a production record for a pesticide, **Barbicide Plus**, that did not include the required EPA registration number for the pesticide on the record.

63. PAK's failure to maintain required information on the production record for **Barbicide Plus** constitutes an unlawful act pursuant to Section 12(a)(2)(B) of FIFRA, 7 U.S.C. § 136j(a)(2)(B).

64. PAK's violation of Section 12(a)(2)(B) of FIFRA, 7 U.S.C. § 136j(a)(2)(B), subjects PAK 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 and Other Relief

65. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the Administrator to consider 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, when assessing an administrative penalty under FIFRA.

66. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$34,017.

67. Within 30 days after the effective date of this CAFO, Respondent must pay a \$34,017 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 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"

In the comment or description field of the electronic funds transfer, state "PAK Technologies, Inc." and the docket number of this CAFO.

68. 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  
[whitehead.ladawn@epa.gov](mailto:whitehead.ladawn@epa.gov)

Claudia Niess, Enforcement Officer  
Enforcement and Compliance Assurance Division  
[niess.claudia@epa.gov](mailto:niess.claudia@epa.gov)

Nidhi K. O'Meara, Associate Regional Counsel  
Office of Regional Counsel  
[omeara.nidhi@epa.gov](mailto:omeara.nidhi@epa.gov)

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

70. If Respondent does not pay the civil penalty in a timely manner, 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.

71. 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**

72. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses for their respective representatives: Nidhi O'Meara at [omeara.nidhi@epa.gov](mailto:omeara.nidhi@epa.gov) (attorney for Complainant), and Daniel Bellehumeur at [dbellehumeur@paktech.com](mailto:dbellehumeur@paktech.com) (representative for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

73. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

74. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

78. 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.

79. Each party agrees to bear its own costs and attorney's fees, in this action.

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

**In the Matter of:  
PAK Technologies, Inc.**

**PAK Technologies, Inc., Respondent**

05/21/2021  
Date



\_\_\_\_\_  
Daniel Bellehumeur  
Director of Quality, Compliance, and Technical Services  
PAK Technologies, Inc.

**In the Matter of:  
PAK Technologies, Inc.**

**United States Environmental Protection Agency, Complainant**

5/25/21

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Date

**MICHAEL  
HARRIS** Digitally signed by  
MICHAEL HARRIS  
Date: 2021.05.25  
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Michael D. Harris  
Director  
Enforcement & Compliance Assurance Division

**In the Matter of:**  
**PAK Technologies, Inc.**  
**Docket No. FIFRA-05-2021-0016**

**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: 2021.05.25  
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Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5



Consent Agreement and Final Order  
In the Matter of: PAK Technologies, LLC  
Docket Number: **FIFRA-05-2021-0016**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2021-0016**, which was filed on **May 26, 2021**, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Complainant:

Ms. Nidhi K. O'Meara  
[omeara.nidhi@epa.gov](mailto:omeara.nidhi@epa.gov)

Copy by E-mail to  
Respondent:

Mr. Daniel Bellehumeur  
[dbellehumeur@paktech.com](mailto:dbellehumeur@paktech.com)

Copy by E-mail to  
Regional Judicial Officer:

Ms. Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_

\_\_\_\_\_  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5