

**FILED**

July 18, 2024

12:35PM

U.S. EPA REGION 7  
HEARING CLERK

**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**BEFORE THE ADMINISTRATOR**

**In the Matter of**

RitePack, Inc.,

**Respondent.**

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**Docket No. FIFRA-07-2024-0070**

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and **RitePack, Inc.** (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).

**ALLEGATIONS**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l and in accordance with the Consolidated Rules of Practice.

**Parties**

2. Complainant, by delegation from the Administrator of EPA and the Regional Administrator of EPA Region 7 is the Director of the Enforcement and Compliance Assurance Division of EPA Region 7.

3. The Respondent is RitePack, Inc., a corporation doing business in the state of Missouri.

### **Statutory and Regulatory Background**

4. Congress enacted FIFRA 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. 7 U.S.C. 136 *et. seq.*

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

6. 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.

7. 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.

8. 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.

9. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, 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.

10. 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 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 \$24,255, for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023.

### **General Factual Allegations**

11. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA.

12. Respondent is a contract manufacturer of various animal nutrition products, fertilizers, and pesticides for the resale and wholesale market, that owns and/or operates a facility at 3800 S. 48th Terrace, St. Joseph, MO.

13. Respondent “distributes” or “sells” a quantity of the pesticide product known as *Escar-Go! Slug and Snail Bait*, EPA Registration Number (EPA Reg. No.) 42750-20-55467, within the meaning of FIFRA.

14. Respondent's facility is subject to regular inspections by the EPA to verify compliance with FIFRA, pursuant to Section 9 of FIFRA, 7 U.S.C. 136g.

15. On or about January 18, 2023, representatives the Missouri Department of Agriculture, acting as a representative of EPA, conducted a Neutral Scheme Producer Establishment Inspection of Respondent's facility to determine compliance with FIFRA and related regulations in the Code of Federal Regulations.

16. At the time of inspection, inspectors selected four products produced at Respondent's facility for sampling through photographs, labels, and records, including *Escar-Go! Slug and Snail Bait*.

### **Allegations of Violations**

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

#### **Count 1** **Distributing Misbranded Pesticide**

18. The facts stated in Paragraphs 11 through 16 above are herein incorporated.

19. 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.

20. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, 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.

21. The January 18 EPA inspection revealed that Respondent sold or distributed a quantity of *Escar-Go! Slug and Snail Bait*, EPA Reg. No. 42750-20-55467.

22. The label of the sample pesticide product sold as *Escar-Go! Slug and Snail Bait*, EPA Reg. No. 42750-20-55467, collected at the time of the inspection, listed the product's active ingredients as follows:

- (a) Iron Phosphate: 0.97%
- (b) Spinosad (a mixture of spinosyn A and spinosyn D): 0.07%

23. The master label for the pesticide product sold as *Escar-Go! Slug and Snail Bait*, EPA Reg. No. 42750-20-55467, obtained from W. Neudorff, lists the product's active ingredients as follows:

- (a) Iron Phosphate: 1.0%

24. Based on a comparison of the sample label collected during inspection and the master label, EPA determined that sample label collected displays incorrect active ingredients and percentages thereof for *Escar-Go! Slug and Snail Bait*.

25. Because the *Escar-Go! Slug and Snail Bait* label bore false information about the product's active ingredients and percentages thereof, it is misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

26. Respondent "distributes" or "sells" *Escar-Go! Slug and Snail Bait* within the meaning of FIFRA.

27. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

### **CONSENT AGREEMENT**

28. 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 rights to appeal the Final Order accompanying this Consent Agreement.

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

30. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

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

32. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: *dcerra@rtpack.com*

### **Penalty Payment**

33. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of five thousand one hundred sixty-five dollars (\$5,165), as set forth below.

34. Respondent shall pay the penalty within thirty (30) days 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 979078  
St. Louis, Missouri 63197-9000

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

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

Regional Hearing Clerk  
*R7\_Hearing\_Clerk\_Filings@epa.gov*; and

Anna Landis, Attorney  
*landis.anna@epa.gov*.

36. 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 (6) percent 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).

37. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the

investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at [weidner.lori@epa.gov](mailto:weidner.lori@epa.gov) within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall notify EPA of this fact within 30 days after the Effective Date of this Consent Agreement and Final Order, and email EPA with Respondent's TIN within 5 days of Respondent's issuance and receipt of the TIN.

### **Effect of Settlement and Reservation of Rights**

38. 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 FIFRA or any other applicable law.

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

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

41. 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 FIFRA and regulations promulgated thereunder.

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

43. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

### **General Provisions**

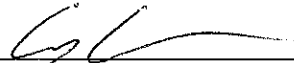
44. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

45. 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 filing by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

47. 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.

**RESPONDENT**  
**RITEPACK, INC.**

  
\_\_\_\_\_  
Signature

6-27-2024  
\_\_\_\_\_  
Date

Gregory Cerra  
\_\_\_\_\_  
Printed Name

Director of Quality  
\_\_\_\_\_  
Title



**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

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Jodi Bruno  
Acting Director  
Enforcement and Compliance Assurance Division

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Date

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Anna Landis  
Office of Regional Counsel

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Date

**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.

IT IS SO ORDERED.

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Karina Borromeo  
Regional Judicial Officer

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Date

**CERTIFICATE OF SERVICE**  
(For EPA use only.)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Ritepack, Inc., EPA Docket No. FIFRA-07-2024-0070, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Anna Landis  
Office of Regional Counsel  
*landis.anna@epa.gov*

Tracey Ramsey  
Enforcement and Compliance Assurance Division  
*ramsey.tracey@epa.gov*

Milady Peters  
Office of Regional Counsel  
*peters.milady@epa.gov*

Copy via Email to Respondent:

Doug Cerra  
Director of Quality, RitePack, Inc.  
3601 S. Leonard Rd.  
Saint Joseph, MO 64503  
*dcerra@rtpack.com*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Signed