

FILED

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**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

**Hawkins, Inc.
Saint Paul, MN**

Respondent.

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Docket No. FIFRA-07-2025-0064

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

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

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 Hawkins, Inc., a business in good standing under the laws of the state of Minnesota and 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)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be 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, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.
6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.
7. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), states that it shall be unlawful for any person to refuse to prepare, maintain, or submit any records required by or under section 136c, 136e, 136f, 136i, or 136q of this title.
8. 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).
9. 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.
10. 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.
11. 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.
12. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “produce” to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “produce” to mean to package, repack, label, relabel, or otherwise change the container of any pesticide or device.
13. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “producer” to mean any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “producer”

to mean any person who packages, repackages, labels, or relabels any pesticide, active ingredient, or device.

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

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

16. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), states that a pesticide is “misbranded” if, *inter alia*:

- a. any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or
- b. there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the net weight or measure of the content.

17. 40 C.F.R. § 152.3 defines “pesticide product” as a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

18. 40 C.F.R. § 165.3 defines “container” as any package, can, bottle, bag, barrel, drum, tank, or other containing-device used to enclose a pesticide. Containers that are used to sell or distribute a pesticide product and that also function in applying the product are considered to be containers for the purposes of this part.

19. 40 C.F.R. § 165.3 defines “stationary pesticide container” as a refillable container that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

20. Pursuant to 40 C.F.R. § 156.10(a)(4)(ii)(B), when pesticide products are stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, a copy of the label of labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge control valve.

21. Pursuant to 40 C.F.R. § 152.132, a registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. Such distribution and sale is termed "supplemental distribution" and the product is referred to as a "distributor product." The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product. Supplemental distribution is permitted if all the required conditions are met, including that the distributor product is not repackaged.

22. Pursuant to 40 C.F.R. § 165.67(c), repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in paragraph (b) of this section is a violation of Section 12 of FIFRA. Both the registrant and the refiller that is repackaging the pesticide product under written contract with the registrant may be liable for violations pertaining to the repackaged product.

23. Pursuant to 40 C.F.R. § 169.2(a), all producers of pesticides, devices, or active ingredients used in producing pesticides subject to this Act, including pesticides produced pursuant to an experimental use permit and pesticides, devices, and pesticide active ingredients produced for export, shall maintain the following records, inter alia: records showing the EPA Registration Number.

24. 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

25. Respondent is, and at all times referred to herein was a "person" within the meaning of FIFRA.

26. Respondent produces Vertex CSS-12 (EPA Reg. No. 9616-7) and Vertex CSS-10 (EPA Reg. No. 9616-8).

27. Respondent supplementally distributes Vertex CSS-12 and Vertex CSS-10 to C K Enterprises, Inc., a pesticide producer and distributor with an establishment in Lone Jack, MO.

28. On January 3, 2024, the Missouri Department of Agriculture conducted an inspection (MDA inspection) at C K Enterprise, Inc.'s establishment in Lone Jack, MO.

29. At the time of the MDA inspection, C K Enterprises, Inc. diluted and repackaged Vertex CSS-12, and renamed it K-San Plus.

30. At the time of the MDA inspection, C K Enterprises, Inc. did not have a registration with the EPA for the pesticide K-San Plus.

Allegations of Violations

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

Count 1

32. The facts stated in Paragraphs 25 through 30 above are herein incorporated.

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

34. Pursuant to 40 C.F.R. § 156.10(a)(1)(iii), every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently, inter alia, the net contents.

35. The MDA inspection revealed that C K Enterprises, Inc. stored a quantity of K-San Plus, EPA Reg. No. 9616-8-49614, for sale or distribution.

36. On the date C K Enterprises, Inc. stored a quantity of the pesticide product K-San Plus, EPA Reg. No. 9616-8-49614 for sale or distribution, the label did not show the specified net contents.

37. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), due to C K Enterprises, Inc.'s failure to include on the label for K-San Plus the net contents, which therefore rendered the pesticide misbranded.

Count 2

38. The facts stated in Paragraphs 25 through 30 above are herein incorporated.

39. Pursuant to 7 U.S.C. § 136j(a)(2)(B)(i), it shall be unlawful for any person to refuse to prepare, maintain, or submit any records required by or under section 136c, 136e, 136f, 136i, or 136q of this title.

40. Pursuant to 40 C.F.R. § 169.2, all producers of pesticides, devices, or active ingredients used in producing pesticides subject to FIFRA, including pesticides produced pursuant to an experimental use permit and pesticides, devices, and pesticide active ingredients produced for export, shall maintain, inter alia, records showing the EPA Registration Number.

41. The MDA inspection revealed that C K Enterprises, Inc. stored a quantity of K-San Plus, EPA Reg. No. 9616-8-49614, for sale or distribution.

42. On the date C K Enterprises, Inc. stored a quantity of the pesticide product sold as K-San Plus, EPA Reg. No. 9616-8-49614 for sale or distribution, C K Enterprises, Inc. did not include the correct registration number for K-San Plus on its batch records.

43. Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), due to C K Enterprises, Inc.'s failure to correctly identify the registration number of K-San Plus on its batch records.

Count 3

44. The facts stated in Paragraphs 25 through 30 above are herein incorporated.

45. Pursuant to 7 U.S.C. § 136j(a)(1)(A), it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under section 136a of this title.

46. The MDA inspection revealed that C K Enterprises, Inc. purchased Vertex CSS-12 (EPA Reg. No. 9616-7) from Respondent, diluted it, repackaged it, and renamed it K-San Plus.

47. On the date C K Enterprises, Inc., diluted and repackaged Vertex CSS-12 from Respondent, C K Enterprises, Inc. did not have a registration for the newly produced pesticide, K-San Plus.

48. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), due to C K Enterprises, Inc. purchasing from Respondent Vertex CSS-12, diluting it, repackaging it, and therefore producing a pesticide (K-San Plus) without registering the pesticide K-San Plus with the EPA.

CONSENT AGREEMENT

49. 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 stated herein;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action specified herein;
- (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.

50. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

51. 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.

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

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

54. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: *dan.louismet@hawkinsinc.com*.

Penalty Payment

55. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of twenty-one thousand, five hundred and nineteen dollars (\$21,519) as set forth below.

56. 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>.

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

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Katherine Kacsur, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

58. 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).

Effect of Settlement and Reservation of Rights

59. 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.

60. 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.

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

62. 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.

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

64. 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

65. 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.

66. 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.

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

68. 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 comply with the terms of this Consent Agreement and Final Order.

RESPONDENT
Hawkins, Inc.

Date: 5/19/2025

By:  _____

Dan Louismet
Print Name

Associate General Counsel
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

David Cozad
Director
Enforcement and Compliance Assurance Division

Britt Bieri
Office of Regional Counsel

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.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Britt Bieri
Office of Regional Counsel
bieri.britt@epa.gov

Brenton Jennings
Enforcement and Compliance Assurance Division
jennings.brenton@epa.gov

Carrie Venerable
ORC\National Experienced Workforce Solutions
venerable.carrie@epa.gov

Copy via Email to Respondent:

Dan Louismet
Associate General Counsel
Hawkins, Inc.
dan.louismet@hawkinsinc.com.

Dated this _____ day of _____, _____.

Signed