

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

FILED

Apr 15, 2025

10:34 am

**U.S. EPA REGION 8
HEARING CLERK**

IN THE MATTER OF:

FloWater, Inc.

4045 Pecos Street,

Denver, CO 80221-2555

Respondent.

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CONSENT AGREEMENT

Docket No. FIFRA-08-2025-0036

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b) 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. Part 22 (Consolidated Rules of Practice).
2. The parties to this proceeding are the authorized representative of the U.S. Environmental Protection Agency, Complainant, and FloWater, Inc., Respondent.
3. Respondent is a corporation organized under the laws of the State of Delaware.
4. Respondent owns and/or operates a pesticide production establishment at 4045 Pecos Street, Denver, CO 80221, with EPA establishment registration number CO-103517 (Establishment).
5. The parties, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement if a regional judicial officer issues a final order for this matter.

II. JURISDICTION

6. This Agreement is issued under the authority vested in the Administrator of EPA by section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, or the Act), 7 U.S.C. § 136l(a)(1). The undersigned EPA official has been delegated the authority to institute this action.

7. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from a regional judicial officer ratifying this Agreement. If issued, the final order will simultaneously commence and conclude this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b).

III. GOVERNING LAW

8. Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), and the regulations at 19 C.F.R. §§ 12.110 - 12.117, establish that importers of pesticides must submit to the EPA, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices on U.S. Environmental Protection Agency Form 3540-1, or must file an electronic alternative to the Notice of Arrival with the filing of entry documentation via any U.S. Customs and Border Protection-authorized electronic data interchange system.
9. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.
10. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), provides that it shall be unlawful for any person in any State to distribute or sell to any person any device that is misbranded.
11. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
12. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines “device” as “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.” See, also, 40 C.F.R. § 152.500(a).

13. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” in part, as any “form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).”
14. Pursuant to the authority in section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1), the Administrator has declared that a pest is “[a]ny fungus, bacterium, virus, prion, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs ... and cosmetics.” See 40 C.F.R. § 152.5(d)
15. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” in part, as any “substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest[.]” See, also, 40 C.F.R. § 152.15
16. 40 C.F.R. § 152.15 defines a “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.”
17. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers” and defines “labeling” in part, 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 or device....”
18. Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), provides, among other things, that a pesticide is misbranded if . . . “(D) its label does not bear the registration number assigned under section 136e of this title [section 7 of FIFRA] to each establishment in which it was produced”.
19. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.” See, also, 40 C.F.R. § 152.3

20. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides that, “[e]xcept as provided by this subchapter, no person in any State may distribute or sell to any person any pesticide that is not registered under this subchapter...” See also, 40 C.F.R. § 152.15.
21. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), provides that it shall be unlawful for any person to violate any regulation issued under section 3(a) or section 19 of FIFRA.
22. The Administrator of the EPA may assess a civil penalty of up to \$24,885 per violation against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA for each offense that occurred after November 2, 2015. *See*, section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and the Civil Monetary Penalty Inflation Adjustment Rule at 90 Fed. Reg. 1375, 1377 (January 8, 2025).

IV. ALLEGATIONS OF FACT AND LAW

23. At all times relevant to this Agreement, Respondent was a “person” as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
24. Respondent imported two shipments, entry numbers JJ8-82153056 and JJ8-82152504, each containing one hundred and eight Flowater Refill Stations (Flowater Refill Station(s)) on October 26, 2023. The two shipments of Flowater Refill Stations entered the United States at the Port of Denver, Colorado, from Korea.
25. Respondent imported one shipment, entry number JJ8-82158121, containing fourteen Water Purifier-Pro 400, Commercial High Flow Units (Flowater Commercial Unit(s)) on December 18, 2023. The shipment of Flowater Commercial Units entered the United States at the Port of Denver, Colorado, from Sweden.
26. Respondent did not file a Notice of Arrival of Pesticides and Devices with EPA for any of the shipments of Flowater Refill Stations and Flowater Commercial Units described above.
27. The Flowater Refill Station labels identify FloWater and Respondent’s Establishment, and direct the reader to the website www.myflowater.com.

28. The website www.myflowater.com automatically redirects viewers to <https://drinkflowater.com>. The product page there has the following language:
- “The most advanced water dispenser ever.”
 - “With our new-tech FloWater Refill Stations, we have introduced the most advanced water purification and sanitizing technology ever”
 - “Eliminates up to 99% of all toxins, heavy metals, microplastics, viruses and bacteria with membrane used in FloWater’s Advanced Osmosis system.”
 - “Self-sanitizing with a fully-recessed dispensing nozzle and the most potent sanitizing mechanism available, eliminating any potential cross- contamination.”
29. The Flowater Refill Stations are pesticide products.
30. The Flowater Commercial Unit labels identify FloWater and Respondent’s Establishment, and direct the reader to www.myflowater.com.
31. The website www.myflowater.com automatically redirects viewers to <https://drinkflowater.com>, which has the following language:
- “The most advanced water dispenser ever.”
 - “With our new-tech FloWater Refill Stations, we have introduced the most advanced water purification and sanitizing technology ever”
 - “Eliminates up to 99% of all toxins, heavy metals, microplastics, viruses and bacteria with membrane used in FloWater’s Advanced Osmosis system.”
 - “Self-sanitizing with a fully-recessed dispensing nozzle and the most potent sanitizing mechanism available, eliminating any potential cross- contamination.”
32. The Flowater Commercial Units are pesticide products.
33. None of the labels for the Flowater Refill Stations and the Flowater Commercial Units bear any EPA establishment registration number, nor does the labeling referenced on the labels (the Flowater web page for these pesticide products).
34. Respondent is and was at all times relevant to the allegations herein, an “importer” as defined in 19 C.F.R. § 101.1 and was the importer of record for the three importations described in paragraphs 24 and 25 above.

V. ALLEGED VIOLATIONS OF LAW

35. Respondent's failure to file a Notice of Arrival of Pesticides and Devices with EPA for any of the three shipments of Flowater Refill Stations and Flowater Commercial Units constitutes three violations of Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).
36. Because the labels and labeling for the Flowater Refill Stations do not bear an EPA establishment registration number, the Flowater Refill Stations are misbranded. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. §§ 136(q)(1)(D).
37. Because the labels and labeling for the Flowater Commercial Units do not bear an EPA establishment registration number, the Flowater Commercial Units are misbranded. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. §§ 136(q)(1)(D).
38. Respondent's importation of each of the three shipments of Flowater Refill Stations and Flowater Commercial Units described in paragraphs 24 and 25 above is a "distribution or sale" pursuant to section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
39. Respondent's distribution or sale of the Flowater Refill stations constitutes 2 violations of section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F).
40. Respondent's distribution or sale of the Flowater Commercial Units constitutes 1 violation of section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F).

VI. TERMS OF AGREEMENT

41. For the purposes of this proceeding, Respondent:
 - a. admits the jurisdictional allegations in this Agreement;
 - b. neither admits nor denies the allegations of fact and law in this Agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action; and
 - e. waives any right to contest the allegations in this Agreement and to appeal any final order ratifying this Agreement. 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 if one is issued by a regional judicial officer for this Agreement.

42. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) authorizes EPA to assess a civil penalty in this matter.
43. Based on the allegations above and having considered the appropriateness of the assessed penalty to Respondents' size of businesses, the effect on Respondent's ability to continue in business, and the gravity of the violation, as required by section 14(a)(4) of FIFRA, 7 U.S.C. § 1367(a)(4), Complainant has determined the civil administrative penalty amount agreed upon below is appropriate to settle this matter.
44. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty of \$8,240.00 within 30 calendar days of the effective date of this Agreement;
 - b. pay the civil penalty using any method provided on the website <https://www.epa.gov/financial/makepayment>; and
 - c. within 24 hours of each payment, email proof of payment to Sherrie Kinard, EPA Region 8, at Kinard.Sherrie@epa.gov, and the Regional Hearing Clerk for EPA Region 8 at R8_Hearing_Clerk@epa.gov. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order.
45. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed, plus interest at currently prevailing rates from the date of the final order pursuant to 26 U.S.C. § 6621(a)(2), attorney's fees and costs for collection proceedings, and a 20% quarterly nonpayment penalty for each quarter during which failure to pay persists;
 - b. refer the debt to a credit reporting agency or a collection agency under 40 C.F.R. §§ 13.13, 13.14, and 13.33;

- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, subparts C and H; and
 - d. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
46. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
47. This Agreement applies to Respondent and its officers, directors, agents, trustees, authorized representatives, successors, and assigns. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement.
48. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.
49. Except as qualified by paragraph 45 above, each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
50. The parties consent to service of this Agreement and any final order ratifying it by email at the following valid email addresses: figur.charles@epa.gov for Complainant, and Jerome DeHerrera, Esq. at jdjh@achivelawgroup.com for Respondent.

VII. EFFECT OF AGREEMENT

51. In accordance with 40 C.F.R. § 22.18(c), compliance with the final order approving this Agreement resolves Respondent's liability only for federal civil penalties for the violations specifically alleged above.
52. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict the EPA's

authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

53. Nothing herein shall be construed to limit the power of the EPA to pursue injunctive or other equitable relief, or criminal sanctions, for any violations of law or to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
54. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.

VIII. EFFECTIVE DATE

55. This Agreement shall become effective on the date a final order ratifying this Agreement is filed with the regional hearing clerk for EPA Region 8.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8,
Complainant**

By: _____
David Cobb, Section Supervisor
Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division

**FLOWATER, INC.,
Respondent**

By:  _____
Chris Liccardi, Chief Operating Officer