

FILED

Feb 26, 2024

9:13 am

**U.S. EPA REGION 5
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No.
)	
Unitrex Ltd.)	Proceeding to Assess a Civil Penalty
doing business as)	Under Section 14(a) of the Federal
SpaRoom)	Insecticide, Fungicide, and Rodenticide
Cleveland, Ohio)	Act, 7 U.S.C. § 136l(a)
Respondent.)	
_____)	

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 and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Unitrex Ltd, doing business as SpaRoom, a limited liability company doing business in the State of Ohio.

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 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. §§ 136-136y.

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 Section 3 of FIFRA.

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, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

12. Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), authorizes the Administrator of the EPA to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that the pesticide or device is in violation of any provision of FIFRA, or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.

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

14. 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 or device.”

15. 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.”

16. 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.”

17. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as “(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-organisms on or in living man or other living animals) which the Administrator [of EPA] declares to be a pest under section [25(c)(1), 7 U.S.C. § 136w(c)(1), of FIFRA].” See also 40 C.F.R. § 152.5.

18. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), states that the term “distribute or sell” means “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(mm) of FIFRA, 7 U.S.C. § 136(mm), states that the term “antimicrobial pesticide” means “a pesticide that (A) is intended to (i) disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or (ii) protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and (B) in the

intended use is exempt from, or otherwise not subject to, a tolerance under section 346a of Title 21 or a food additive regulation under section 348 of Title 21.”

20. The regulation at 40 C.F.R. § 152.15(a) provides that 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 a combination with any other substance) can or should be used as a pesticide or that the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide.

21. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA of up to \$21,805 for each offense occurring after November 2, 2015, and assessed after January 12, 2022, pursuant to Section 14(a)(1), 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

23. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 5060 Taylor Road, Bedford Heights, Ohio 44128.

24. On at least May 21, 2021, an EPA representative visited Respondent’s website, at www.sparoom.com, and observed S&S Sanitizing Alcohol Wipes listed for sale with the following claims:

- a. “Disinfect your surroundings with new sparoom® sanitizing alcohol wipes, available in a convenient and plentiful 50pc pack!;”
- b. “Kills 99.99% of infectious bacteria;” and

c. “For sanitizing hands and surfaces.”

25. The label of S&S Sanitizing Alcohol Wipes pictured on Respondent’s website included the following statements:

a. “Kills 99.99% infectious bacteria”

b. “For hands & surfaces.”

26. The packaging of S&S Sanitizing Alcohol Wipes listed alcohol as an ingredient. The product page for S&S Sanitizing Alcohol Wipes on Respondent’s website stated “[t]his product contains Ethyl Alcohol Content of 75%.”

27. Ethyl alcohol (also referred to as simply alcohol) is an active pesticidal ingredient recognized under FIFRA.

28. As evidenced by statements on the label, S&S Sanitizing Alcohol Wipes are intended to destroy bacteria, and therefore are a “pesticide” as defined under FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.15(a)(1).

29. Specifically, S&S Alcohol Wipes are an “antimicrobial pesticide” as that term is defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm).

30. Because S&S Sanitizing Alcohol Wipes are a pesticide, they are required to be registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

31. S&S Sanitizing Alcohol Wipes are not registered under Section 3 of FIFRA.

32. On or about November 30, 2021, EPA issued a Stop Sale, Use, or Removal Order (SSURO) under Section 13(a) of FIFRA, 7 U.S.C. § 136k(a) to Respondent, which ordered Respondent to immediately cease the distribution, sale, use, or removal for disposal of two unregistered pesticides, including S&S Sanitizing Alcohol Wipes.

33. On or about December 13, 2021, Respondent provided additional photographs of the S&S Sanitizing Alcohol Wipes label, which included the statements referenced in Paragraph 25, above.

34. All S&S Sanitizing Alcohol Wipes that Respondent sold bore the label described in Paragraph 25.

35. On or about January 4, 2022, Respondent provided distribution records for sales and distributions of S&S Sanitizing Alcohol Wipes which occurred from approximately August 17, 2020 through September 7, 2021.

Counts 1-12

Sale of Unregistered Pesticide: S&S Sanitizing Alcohol Wipes

36. Complainant incorporates Paragraphs 1 through 35 of this CAFO as though set forth in this paragraph.

37. Between August 17, 2020 through September 7, 2021, Respondent distributed or sold S&S Sanitizing Alcohol Wipes, a pesticide, as that term is defined under FIFRA, which was not registered under Section 3 of FIFRA and as such, is an unregistered pesticide.

38. Between August 17, 2020 through September 7, 2021, Respondent distributed or sold S&S Sanitizing Alcohol Wipes, on at least 12 separate occasions.

39. Respondent's distribution or sale of the unregistered pesticide, S&S Sanitizing Alcohol Wipes, on 12 occasions constitutes 12 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

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

Civil Penalty

41. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$41,040. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business and the gravity of the violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009.

42. Respondent must pay the \$41,040 civil penalty in 6 installments with interest as follows:

Installment	Due By	Payment	Principal	Interest
Payment #1	Within 30 days of the effective date of the CAFO	\$6,840	\$6,840	\$0
Payment #2	Within 90 days of the effective date of the CAFO	\$7,096.50	\$6,840	\$256.50
Payment #3	Within 150 days of the effective date of the CAFO	\$6,976.80	\$6,840	\$136.80
Payment #4	Within 210 days of the effective date of the CAFO	\$6,942.60	\$6,840	\$102.60
Payment #5	Within 270 days of the effective date of the CAFO	\$6,908.40	\$6,840	\$68.40
Payment #6	Within 330 days of the effective date of the CAFO	\$6,874.20	\$6,840	\$34.20

Respondent must pay the installments by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
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 Unitrex Ltd. d/b/a/ SpaRoom and the docket number of this CAFO.

43. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Angela Bouche (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
bouche.angela@epa.gov
and
R5lecab@epa.gov

Lisa Frasco (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
frasco.lisa@epa.gov

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

45. If Respondent does not pay any installment payment as set forth in paragraph 42, above, the entire balance of the civil penalty shall become due and owing upon written notice by EPA to Respondent of the delinquency. EPA may refer the delinquency to the Attorney General to recover any unpaid penalty with interest 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.

46. 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

47. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: frasco.lisa@epa.gov (for Complainant), and anthony@sparoom.com (for Respondent).

48. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

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

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

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

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

53. 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.

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

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

**In the Matter of:
Unitrex Ltd. d/b/a SpaRoom
Docket No.**

Unitrex Ltd. d/b/a SpaRoom, Respondent

1/23/2024
Date



Anthony Padrazo
CEO
Unitrex Ltd. d/b/a SpaRoom

United States Environmental Protection Agency, Complainant

Michael D. Harris, Director
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency
Region 5

**In the Matter of:
Unitrex Ltd. dba SpaRoom
Docket No.**

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 L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5