



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
**AUG - 9 2017**

REPLY TO THE ATTENTION OF:  
LC-17J

VIA EMAIL

Mr. Colin C. Clark  
Attorney  
Mathis, Marifian & Richter, Ltd.  
23 Public Square, Suite 300  
Belleville, Illinois 62220

cclark@MMRLTD.com

Re: Consent Agreement and Final Order In the Matter of Brookside Agra, LLC Docket  
Number FIFRA-05-2017-0047

Mr. Clark:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 9, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$21,240.00 is to be paid in the manner described in paragraphs 31-32. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Abigail Wesley".

Abigail Wesley  
Pesticides and Toxics Compliance Section

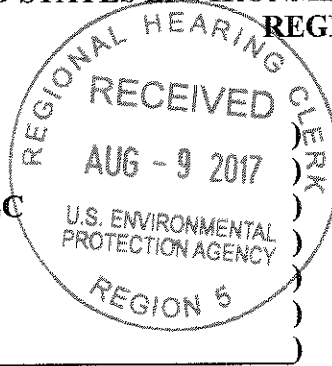
cc: Robert H. Smith (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Brookside Agra, LLC  
O'Fallon, Illinois

Respondent.



Docket No.: FIFRA-05-2017-0047

Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide and Rodenticide  
Act, 7 U.S.C. § 136l(a)

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 Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Brookside Agra, LLC (Brookside Agra), a Limited Liability Company doing business in the State of Illinois.

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 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as “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 the term “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.” Also see 40 C.F.R. § 152.3.

12. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” 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 Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. § 152.5.

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Also see 40 C.F.R. § 152.3.

14. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as 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” as all labels and other written, printed or graphic matter accompanying the pesticide at any time or to which reference is made on the label or in literature accompanying the pesticide.

16. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides that no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.

17. 40 C.F.R. § 152.15(a) states, in pertinent part, that no person may distribute or sell any pesticide product that is not registered under FIFRA. It further states 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 can or should be used as a pesticide.

18. 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.

19. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides 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 \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461 note, and its implementing regulations at 40 C.F.R. Part 19, increased this amount to \$18,750 for each offense occurring after November 2, 2015.

### Factual Allegations and Alleged Violations

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

21. At all times relevant to this Complaint, Respondent owned or operated a business at 1331 Park Plaza Drive, Suite 1, O’Fallon, Illinois 62269 (Brookside Agra facility).

22. On or about December 7, 2016, an EPA inspector employed by the Illinois Department of Agriculture (IDA) and authorized to conduct inspections under FIFRA, conducted an inspection at the Brookside Agra facility.

23. During the December 7, 2016 inspection at the Brookside Agra facility, the IDA inspector collected distribution or sales records, records of receipt, product labeling, brochures, and advertising for “Disrupt.”

24. The advertising for “Disrupt” made pesticidal claims and stated:

- a. DISRUPT is an all-natural environmental prophylactic and desiccant powder that provides sustained suppression of pathogens in animal production and animal housing facilities.;
- b. Controls viruses, bacteria, fungi and parasites;
- c. Additional Uses: Dry food baths, whole grain storage (prep and top dress), meal moth webs in feed chutes, biosecurity for livestock trucks and trailers, biosecurity at livestock exhibitions, drying agent with microbial protection for baby pigs, and many more.;

d. BENEFITS OF DISRUPT

In studies of nosocomial diseases (illness contracted within a hospital environment), scientists discovered that replacing traditional stainless steel with copper, zinc and iron surfaces in hospitals greatly inhibits microbes.

Based on these findings, DISRUPT uses a patent pending blend of copper, zinc and iron to deactivate viral, bacterial, and fungal pathogens in animal production facilities.;

- e. Disrupt reduces and sustains suppression of microbes for extended periods of time.;
- f. DISRUPT INHIBITS: Escherichia coli, Staphylococcus spp\*, Streptococcus spp\*, Salmonella spp\*, Salmonella enteritidis, Clostridium spp\*
  - \* Staphylococcus spp: aureus & epidermidis
  - \* Streptococcus spp: pyogenes, faecalis & mutans
  - \* Salmonella s: typhimurium, choleraesuis, & enteritidis
  - \* Clostridium spp: difficile & perfringens; and
- g. Repeat weekly to refresh the thin coating and prevent the development and spread of viruses, bacteria, fungi, parasites, and moisture.; and

25. Disrupt is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. At all times relevant to the Complaint, “Disrupt” was not registered under section 3 of FIFRA, 7 U.S.C. § 136(a).

27. On March 6, 2017, EPA issued a Stop Sale, Use and Removal Order to Brookside Agra for unlawfully offering an unregistered pesticide product for distribution or sale.

28. Distribution and sales records show that Respondent distributed or sold a quantity of “Disrupt,” in 40-pound bags, on at least 3 separate occasions during calendar years 2015 and 2016:

<b>Invoice Number</b>	<b>Date</b>
8732	12/11/2015
8770	1/5/2016
9221	11/9/2016

29. On the dates listed in paragraph 28, above, the 40-pound bags of “Disrupt,” that were distributed or sold by Respondent, were unregistered pesticides, as they were not registered under section 3 of FIFRA, 7 U.S.C. § 136(a).

30. Respondent’s distribution or sale of unregistered pesticide, “Disrupt,” constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

31. 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 the FIFRA, 7 U.S.C. § 136l(a).

**Civil Penalty**

32. 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 \$21,240. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009.

33. Respondent agrees to pay a civil penalty in the amount of \$21,240, in the manner set forth below.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$21,240.00 civil penalty for the FIFRA violations by sending a cashier’s or certified check,

payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

or for checks sent by express mail, send a certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

35. Respondent must send a notice of payment, that (1) states Respondent's name and the case docket number and (2) includes a copy of the cashier's or certified check, to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Abigail Wesley (LC-17J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard.  
Chicago, Illinois 60604

Robert H. Smith (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

37. If Respondent does not pay timely the civil penalty, 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). Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. 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**

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

40. 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.

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

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

43. This CAFO constitutes a Final Order pursuant to Section 22.31 of the Consolidated Rules.

44. The terms of this CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors and assigns.

45. Each person signing this CAFO certifies that he or she has the authority to sign this CAFO for the party whom he or she represents and to bind that party to its terms.

46. Each party agrees to bear its own costs and attorneys' fees in this action.

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

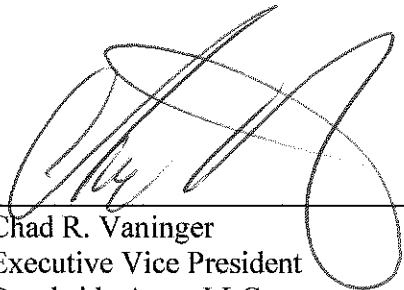
48. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: smith.roberth@epa.gov (for Complainant) and cclark@mmrltd.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

49. The effective date of this CAFO shall be the day it is filed with the Regional Hearing Clerk as required by § 22.18(b)(3) of the Consolidated Rules.

**In the Matter of:  
Brookeside Agra, LLC**

**Brookeside Agra, LLC, Respondent**

7/17/17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Chad R. Vaninger  
Executive Vice President  
Brookeside Agra, LLC

**In the Matter of:  
Brookeside Agra, LLC**

**United States Environmental Protection Agency, Complainant**

8/04/2017  
Date

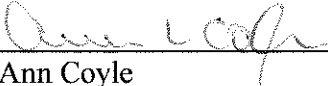
Michael D. Harris *For B.L.*  
Brigid Lowery  
Acting Director  
Land and Chemicals Division  
United States Environmental Protection Agency  
Region 5

**In the Matter of:**  
**Brookeside Agra, LLC**  
**Docket No. FIFRA-05-2017-0047**

**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.

August 4, 2017  
Date

  
\_\_\_\_\_  
Ann Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

In the matter of: Brookside Agra, LLC  
Docket Number: FIFRA-05-2017-0047

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on, August 9, 2017 this day in the following manner to the addressees:

Copy by Email to  
Respondent:

Colin C. Clark  
ccclark@MMRLTD.com

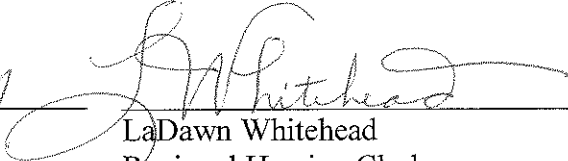
Copy by e-mail to  
Attorney for Complainant:

Robert H. Smith  
smith.roberth@epa.gov

Copy by e-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: August 9, 2017

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