

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No.</b>
	)	
<b>A.E. Fleming Co. Inc., d/b/a</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Great Lakes Garden Wholesale</b>	)	<b>Under Section 14(a) of the</b>
<b>Warren, Michigan</b>	)	<b>Federal Insecticide, Fungicide, and</b>
	)	<b>Rodenticide Act, 7 U.S.C. § 136l(a)</b>
	)	
<b>Respondent.</b>	)	
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**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, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is A.E. Fleming Co. Inc., d/b/a Great Lakes Garden Wholesale, a corporation doing business in the State of Michigan.

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 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.

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(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.”

13. Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

14. The regulation at 40 C.F.R. § 152.15(a)(1) states that a substance is considered to be intended for a pesticidal purpose, *i.e.*, use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or otherwise implies (by labelling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide.

15. 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.”

16. 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 ... 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.”

17. 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) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

18. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 6811 Miller Drive, Warren, Michigan 48092 (the Facility).

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

20. On April 29, 2021, an inspector employed by the Michigan Department of Agriculture and Rural Development (MDARD) conducted an inspection in accordance with

Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136(f) and 136(g), at Respondent's retail store known as Great Lakes Garden Wholesale located at 6811 Miller Drive, Warren, Michigan 48092 (the Inspection).

21. During the Inspection, the MDARD inspector observed **Hydr-Ox** and **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant** offered for sale at Respondent's facility.

#### **Hydr-Ox**

22. During the Inspection, the MDARD inspector collected records of Respondent's sales of **Hydr-Ox** covering the period of May 1, 2018, through April 12, 2021.

23. During the Inspection, the MDARD inspector collected a physical sample of **Hydr-Ox**.

24. The label of **Hydr-Ox** observed by the MDARD inspector during the Inspection and affixed to the container of the product collected as a physical sample lists the following claim or statement:

a. Helps germination, kills bacteria, purifies water and removes chlorine

25. The product label of **Hydr-Ox** observed by the MDARD inspector during the Inspection lists the website, [www.mygreenplanet.com](http://www.mygreenplanet.com).

26. On February 14, 2022, EPA visited [www.mygreenplanet.com](http://www.mygreenplanet.com) and observed the following claims or statements for **Hydr-Ox**:

a. "Maintenance product that sterilizes and helps suppress diseases;"

b. "Hydr-Ox is a highly concentrated oxygen additive that promotes healthy plant growth and maintenance by sterilizing and suppressing diseases in your grow environment;"

- c. “This means Hydr-Ox has a variety of uses in the garden as a source of oxygen and a sterilizing agent;”
- d. “Adding it to a hydroponic or soils garden will boost oxygen levels and help suppress diseases and root rot;” and
- e. ‘It can also be used as a sterilize a variety of gardening equipment such as nutrient reservoirs, hydroponic systems, and harvesting tools.’”

27. **Hydr-Ox** is a “pesticide” as that term is defined in Paragraph 13 and, as such, is required to be registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

28. **Hydr-Ox** is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, and as such, is an unregistered pesticide based on the intended use and pesticidal claims made in relation to the product.

29. Information collected during MDARD’s inspection and EPA’s investigation indicates that Respondent purchased **Hydr-Ox** from its manufacturer and did not produce or label **Hydr-Ox**.

**Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant**

30. During the Inspection, the MDARD inspector collected records of Respondent’s sales of **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant** covering the period of March 30, 2020, through April 23, 2021.

31. During the Inspection, the MDARD inspector collected a physical sample of **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant**.

32. The label of **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant** observed by the MDARD inspector during the Inspection and affixed to the container of the product collected as a physical sample lists the following claims or statements:

- a. “Pest control in growth media;” and
- b. “Prevents & helps control mold.”

33. The label of **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant** observed by the MDARD inspector during the Inspection and affixed to the container of the product collected as a physical sample includes pesticidal graphics of a bug crossed out and of what appears to be a virus crossed out.

34. **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant** is a “pesticide” as that term is defined in Paragraph 13 and, as such, is required to be registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

35. **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant** is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, and as such, is an unregistered pesticide based on the intended use and pesticidal claims made in relation to the product.

36. Information collected during MDARD’s inspection and EPA’s investigation indicates that Respondent purchased **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant** from its manufacturer and did not produce or label **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant**.

#### Counts 1 through 10

#### Distribution or Sale of Unregistered Pesticide Hydr-Ox

37. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

38. Respondent distributed or sold, as that term is defined in Paragraph 12, **Hydr-Ox** on or about the following dates:

- a. May 1, 2018 (Sales Order Number 28439);

- b. June 13, 2018 (Sales Order Number 28743);
- c. July 1, 2019 (Work Order Number 31761);
- d. August 26, 2020 (Work Order Number 35332);
- e. September 20, 2018 (Work Order Number 29338);
- f. October 14, 2020 (Work Order Number 35798);
- g. November 5, 2020 (Sales Order Number 35999);
- h. November 9, 2020 (Work Order Number 36019);
- i. January 18, 2021 (Invoice Number 34143); and
- j. April 12, 2021 (Sales Order Number 37247).

39. On each of the ten dates listed in Paragraph 38, above, **Hydr-Ox** was not registered with U.S. EPA pursuant to section 3 of FIFRA, 7 U.S.C. § 136a.

40. Respondent's distributions or sales of the unregistered pesticide, **Hydr-Ox**, on at least ten separate occasions, as set forth in Paragraph 38, above, constitute ten unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

41. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

### **Counts 11 through 22**

#### **Distribution or Sale of Unregistered Pesticide Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant**

42. Complainant incorporates by reference the allegations contained in paragraphs 1 through 21, and 30 through 36 of this CAFO.

43. Respondent distributed or sold, as that term is defined in Paragraph 12, **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant** on or about the following dates:

- a. March 30, 2020 (Sales Order Number 34009);
- b. May 15, 2020 (Work Order Number 34392);
- c. June 1, 2020 (Work Order Number 34526);
- d. November 23, 2020 (Work Order Number 36145);
- e. January 11, 2021 (Invoice Number 34075);
- f. January 20, 2021 (Invoice Number 34208);
- g. January 20, 2021 (Invoice Number 34209);
- h. January 22, 2021 (Invoice Number 34215);
- i. January 27, 2021 (Invoice Number 34267);
- j. April 19, 2021 (Invoice Number 34943);
- k. April 22, 2021 (Invoice Number 35002); and
- l. April 23, 2021 (Invoice Number 35020).

44. On each of the twelve dates listed in Paragraph 43, above, **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant** was not registered with U.S. EPA pursuant to section 3 of FIFRA, 7 U.S.C. § 136a.

45. Respondent's distributions or sales of the unregistered pesticide, **Spectrum Formulas Hydrogen Peroxide General Purpose Cleaner and Disinfectant**, on at least twelve separate occasions, as set forth in Paragraph 43, above, constitute twelve unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

46. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subject Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

**Civil Penalty**

47. 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 **\$144,320**. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of the 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.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$144,320** civil penalty for the alleged FIFRA violations by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
SWIFT address FRNYUS33  
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 "A.E. Fleming Co. Inc. d/b/a Great Lakes Garden Wholesale" and the docket number of this CAFO.

49. 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  
U.S. EPA, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

Angela Bouche  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
[bouche.angela@epa.gov](mailto:bouche.angela@epa.gov)  
and  
[R5lecab@epa.gov](mailto:R5lecab@epa.gov)

Sophie Grueterich  
Office of Regional Counsel  
U.S. EPA, Region 5  
[grueterich.sophie@epa.gov](mailto:grueterich.sophie@epa.gov)

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

51. 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

52. 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**

53. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [grueterich.sophie@epa.gov](mailto:grueterich.sophie@epa.gov) (for Complainant), and [rbaron@fbmjlaw.com](mailto:rbaron@fbmjlaw.com) and [cballew@fbmjlaw.com](mailto:cballew@fbmjlaw.com) (for Respondent).

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

55. 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.

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

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

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

59. 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.

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

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

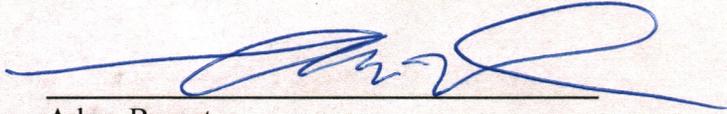
**In the Matter of:**

**A.E. Fleming Co. Inc. d/b/a Great Lakes Garden Wholesale**

**A.E. Fleming Co. Inc. d/b/a Great Lakes Garden Wholesale, Respondent**

4/18/23

Date



Adam Bryant

Vice President

A.E. Fleming Co. d/b/a Great Lakes Garden Wholesale

**In the Matter of:**  
**A.E. Fleming Co. Inc. d/b/a Great Lakes Garden Wholesale**  
**United States Environmental Protection Agency, Complainant**

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Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division

**In the Matter of:  
A.E. Fleming Co. Inc. d/b/a Great Lakes Garden Wholesale  
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.

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

Consent Agreement and Final Order  
In the Matter of: A.E. Fleming Co. Inc. dba Great Lakes Garden Wholesale  
Docket Number:

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number \_\_\_\_\_, which was filed on \_\_\_\_\_, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Complainant: Ms. Sophie Grueterich  
[grueterich.sophie@epa.gov](mailto:grueterich.sophie@epa.gov)

Copy by E-mail to  
For Respondent: Mr. Richard Baron  
[rbaron@fbmjlaw.com](mailto:rbaron@fbmjlaw.com) and  
Ms. Cheryl Ballew  
[cballew@fbmjlaw.com](mailto:cballew@fbmjlaw.com)  
Foley, Baron, Metzger & Juip, PLLC  
Cambridge Center  
38777 Six Mile Rd., Suite 300  
Livonia, MI 48152

Copy by E-mail to  
Regional Judicial Officer: Ms. Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_  
Juliane Grange  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5