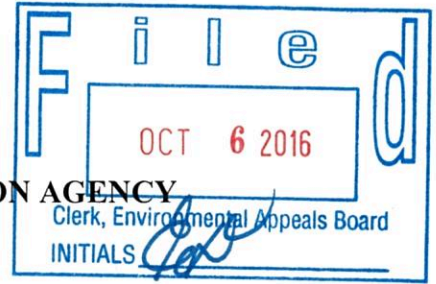


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
In re:))
)) Docket No. FIFRA-HQ-2016-5017
American Covers, Inc., d/b/a Handstands))
))
))
_____))

FINAL ORDER

Before the Environmental Appeals Board (“Board”) is the attached Consent Agreement resolving this matter. The parties to the Consent Agreement seek the Board’s ratification of the Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(3) and (c). Based on the parties’ representations about the scope of the settlement, the Board ratifies the Consent Agreement.

In the Consent Agreement, Respondent agrees to pay a \$5720 civil penalty for the purposes of settlement. Consent Agreement ¶¶ 33 & 38-39. The parties then agree that “Respondent’s compliance with the terms of this [Consent Agreement and Final Order] shall fully settle all civil claims or civil causes of action alleged in Section V.” *Id.* ¶ 34. Section V is entitled “EPA Allegations and Determinations.” *Id.* at 3. Finally, the parties agree that “[n]othing in this [Consent Agreement and Final Order] is intended to, nor shall be construed to operate in any way to, resolve any criminal liability of Respondent.” *Id.* ¶ 36.

Under the Consolidated Rules of Practice, parties may settle an administrative enforcement action at any time by recording the terms and conditions of the settlement in a written consent agreement. 40 C.F.R. § 22.18(b)(2). Where EPA Headquarters commences the relevant proceeding, as is the case here, the administrative enforcement action it is not disposed of until the Board issues a “final order * * * ratifying the parties’ consent agreement.” *Id.* § 22.18(b)(3).

The Rules further provide that “settlement pursuant to [40 C.F.R. § 22.18(b)] 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” and the settlement “shall only resolve respondent’s liability for Federal civil penalties for the violations and facts alleged in the complaint.” *Id.* § 22.18(c).¹ In addition, the Board’s final order “shall not in any case

¹ Where, as here, the parties agree to a settlement before the filing of a complaint, the Agency may simultaneously commence and conclude the matter by issuance of a consent agreement. In that instance, the reference in 40 C.F.R. § 22.18(c) to violations and facts alleged “in the complaint” is properly read to refer to the consent agreement resolving the matter. *See* 40 C.F.R. §§ 22.13(b) & 22.18(b)(2).

affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief.” *Id.* § 22.31(a) (effect of final order); *see also id.* § 22.3(a) (defining “[f]inal order” to include “[a] final order issued in accordance with § 22.18”); *id.* § 22.18(b)(3) (requiring, in these circumstances, a final order from the Board ratifying the parties’ consent agreement).

The Consent Agreement states that Respondent’s compliance with the Consent Agreement and Final Order shall “fully settle *all civil claims or civil causes of action* alleged in Section V” of the Consent Agreement. Consent Agreement ¶ 34 (emphasis added). That language does not state that the settlement resolves only Respondent’s liability for federal civil penalties and could be read to subsume the ability to pursue “appropriate injunctive or other equitable relief” for any violations of law. 40 C.F.R. § 22.18(c). Given that ambiguity, the Board’s staff consulted with the parties as to their intent. Based on the parties’ representations, the Board concludes that the settlement resolves only federal civil penalties, not *all* civil claims or civil causes of action. The Board therefore incorporates by reference the attached Consent Agreement into this Final Order and ratifies the Consent Agreement.

The Board cautions the parties, however, and particularly EPA counsel, to ensure that the terms of and language in all future consent agreements executed under the Consolidated Rules expressly conform to the Rules’ requirements, including those set forth at 40 C.F.R. § 22.18.

Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.²

ENVIRONMENTAL APPEALS BOARD

Dated: 10/06/16



Aaron P. Avila
Environmental Appeals Judge

² The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of American Covers, Inc., d/b/a Handstands, Docket No. FIFRA-HQ-2016-5017, were filed and copies of the same were sent to the following persons in the manner indicated:

**By First Class Certified Mail/
Return Receipt Requested:**

Caleb Haydon
Corporate Counsel
Energizer Holdings, Inc.
533 Maryville University Drive
St. Louis, MO 63141

Eliot Harrison
Lewis & Harrison, LLC
122 C Street NW, Suite 740
Washington, DC 20001

By Interoffice Mail:

Christina E. Cobb
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 2843
Washington, DC 20460

Dated: OCT - 6 2016



Annette Duncan
Secretary