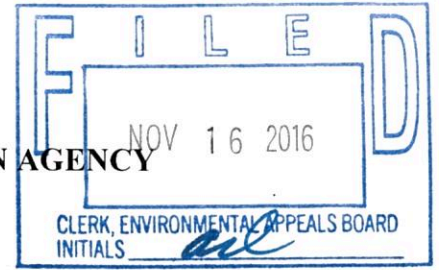


**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



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In re:) Docket No. FIFRA-HQ-2016-5022
))
ECCO USA, Inc.))
))
_____))

FINAL ORDER

Before the Environmental Appeals Board (“Board”) is the attached Consent Agreement resolving this matter. The parties to this Consent Agreement seek the Board’s ratification of the Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(3) and (c). For the reasons that follow, the Board ratifies the Consent Agreement.

In this Consent Agreement, Respondent agrees to pay a \$325,000 civil penalty for the purposes of settlement. Consent Agreement ¶ 26. The parties agree that Respondent’s “[f]ull payment of the penalty proposed in this [Consent Agreement and Final Order (“CAFO”)] shall only resolve Respondent’s liability for Federal civil penalties for the violations alleged in Section V [(titled “EPA Allegations and Determinations”)] of this CAFO.” *Id.* ¶ 21. That language does not appear to conform to the text of 40 C.F.R. § 22.18(c). Under that provision, “[f]ull payment of the penalty proposed in a complaint pursuant to [40 C.F.R. § 22.18(a)] or settlement pursuant to [40 C.F.R. § 22.18(b)] shall only resolve respondent’s liability for Federal civil penalties for the violations and facts alleged in the complaint.” 40 C.F.R. § 22.18(c).¹ The initial reference to “[f]ull payment of the penalty proposed” (the phrase used in Paragraph 21 of the Consent Agreement) does not refer to a case settled by a consent agreement under 40 C.F.R. § 22.18(b). A settlement, memorialized in a consent agreement under section 22.18(b), does not “propose” payment of a penalty; rather, a settlement is an agreement between the parties, including (as in this case) agreement on any penalty to be paid. The complete reference – “[f]ull payment of the penalty proposed in a complaint pursuant to paragraph (a) – instead addresses “quick resolutions” of administrative enforcement actions under 40 C.F.R. § 22.18(a). Under section 22.18(a), a respondent may reach a quick resolution of such an action by “paying the specific penalty *proposed in the complaint * * * in full.*” *Id.* § 22.18(a) (emphases added). The Board recognizes that the parties signed the Consent Agreement prior to the Board’s order in *In re Sumitomo Chemical Co.*, FIFRA-HQ-2016-5020 (EAB Oct. 13, 2016) (Final Order), which

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), .18(b)(2).

addressed a consent agreement with language similar to Paragraph 21 in this Consent Agreement.


Here, Respondent's only obligation under the CAFO is the payment of the agreed-upon civil penalty (and any interest or late charges). *See* Consent Agreement ¶¶ 25-29; *see also id.* ¶ 35 ("Respondent's obligation under this CAFO shall terminate when Respondent has paid the civil penalty, and any applicable interest or late charges, as specified in Section VII [(titled "Civil Penalty")] of the Consent Agreement in accordance with the Final Order."). The Board therefore concludes that the Consent Agreement (as opposed to the "[f]ull payment of the penalty proposed in th[e] CAFO") resolves only federal civil penalties and is consistent with 40 C.F.R. § 22.18(c). The Office of Civil Enforcement has informed the Board that it will incorporate revised language in future consent agreements under 40 C.F.R. § 22.18(b) that tracks with the regulatory language of 40 C.F.R. § 22.18(c): "Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties" alleged in the relevant section(s) of the CAFO. *See also Sumitomo* at 2. The Board recognizes the Agency's acknowledgement of the appropriate regulatory language.

Thus, the Board incorporates by reference the attached Consent Agreement into this Final Order and ratifies the Consent Agreement. The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.²

ENVIRONMENTAL APPEALS BOARD

Dated: November 14, 2016



Mary Kay Lynch
Environmental Appeals Judge

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

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order" in the matter of *ECCO USA, Inc.*, Docket No. FIFRA-HQ-2016-5022, 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:**

Lawrence E. Cullen
Arnold & Porter LLP
601 Massachusetts Avenue, NW
Washington, DC 20001

By Interoffice Mail:

Adrienne Trivedi
Office of Civil Enforcement
1200 Pennsylvania Ave., NW
Mail Code 2249A
Washington, DC 20460

Dated: NOV 16 2016



Annette Duncan
Administrative Specialist