



Docket No. FIFRA-HQ-2024-5002

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

So ordered.¹

Wendy L. Blake
Environmental Appeals Judge

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Wendy L. Blake, and Ammie Roseman-Orr.

)	
In the Matter of:)	
)	Docket No. FIFRA-HQ-2024-5002
SUPERSTRATUM CO.,)	
Carrollton, Texas)	
)	
RESPONDENT.)	
)	

I. PRELIMINARY STATEMENT

2. Complainant is the Director of the Waste and Chemical Enforcement Division within the Office of Civil Enforcement of the United States Environmental Protection Agency (“EPA”). Complainant is authorized by lawful delegation from the Administrator of the EPA to negotiate and sign consent agreements memorializing settlements in multi-regional cases pursuant to section 14 of FIFRA. 7 U.S.C. § 136f; EPA Delegation 5-14 (May 11, 1994; Administrative Update Feb. 4, 2016); WCED Delegation 5-14 (Sept. 2015).

II. JURISDICTION

4. This is an administrative action for the assessment of civil penalties under FIFRA section 14(a), for violations of FIFRA sections 12(a)(1)(A) and 12(a)(1)(F). 7 U.S.C. §§ 136l(a), 136j(a)(1)(A) and 136j(a)(1)(F).

5. The Consolidated Rules of Practice governs all administrative adjudicatory proceedings for the assessment of any administrative civil penalty under FIFRA section 14(a). 7 U.S.C. §136l(a); 40 C.F.R. § 22.1(a)(1).

6. This action may be commenced and concluded simultaneously by the issuance of this Consent Agreement and proposed Final Order because Complainant and Respondent (“the Parties”) agree to settle this action without the filing of a complaint or the adjudication of any issue of fact or law. 40 C.F.R. § 22.13(b).

7. The Environmental Appeals Board is authorized to ratify this Consent Agreement, which memorializes a settlement between the Parties. 40 C.F.R. §§ 22.4(a) and 22.18(b)-(c); EPA Delegation 5-15-B (May 11, 1994).

III. GOVERNING LAW

8. Sections 3(a) and 12(a)(1)(A) of FIFRA provide that it is unlawful for any person in any state to distribute or sell to any person a pesticide that is not registered under FIFRA subject to certain exemptions not relevant to this matter. 7 U.S.C. §§ 136a(a), 136j(a)(1)(A).

9. Section 12(a)(1)(F) of FIFRA provides that it is unlawful for any person in any state to distribute or sell to any person any device that is misbranded. 7 U.S.C. § 136j(a)(1)(F).

10. “Person” means “any individual, partnership, association, corporation, or any organized group or persons whether incorporated or not.” 7 U.S.C. § 136(s).

11. “To 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. 7 U.S.C. § 136(gg); 40 C.F.R. § 152.3.

12. “Pesticide” is defined in part as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u).

13. Under 40 C.F.R. § 152.15, “[a] substance is considered to be intended for a pesticidal purpose, [i.e., used for the purpose of preventing, destroying, repelling, or mitigating any pest] and thus a pesticide requiring registration if:

- (A) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (i) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (ii) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or
- (B) The substance consists of or contains one or more active ingredients that has no significant commercially valuable use as distributed or sold other than (1) use for pesticide purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or
- (C) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose. 40 C.F.R. § 152.15.

14. The term “active ingredient” refers to an ingredient in a pesticide other than a plant regulator, defoliant, desiccant, or nitrogen stabilizer that will prevent, destroy, repel, or mitigate any pest. 7 U.S.C. § 136(a).

15. “Pest” means any insect, rodent, nematode, fungus, weed, any other form of terrestrial or aquatic plant or animal life or virus, bacteria, prion, or other micro-organisms (except viruses, bacteria, or other micro-organisms on or in living man or living animals and those on or in processed food or processed animal feed, beverages, drugs, and cosmetics). 7 U.S.C. § 136(t). *See also* 40 C.F.R. § 152.5.

16. A “pesticide product” is a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed, or sold. 40 C.F.R. § 152.3.

17. The term “fungus” includes “for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.” 7 U.S.C. § 136(k).

18. “Device” means any instrument or contrivance (other than a firearm) that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals). The term does not include equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom. 7 U.S.C. § 136(h); *see also* 40 C.F.R. § 152.500(a).

19. EPA regulations at 40 C.F.R. § 152.500(b) explain that although devices are not required to be registered under FIFRA section 3, they are subject to the labeling provisions of FIFRA section 2(q)(1) and 40 C.F.R. pt. 156 and enforcement provisions within FIFRA sections 12, 13, and 14.

20. A device may be “misbranded” if (as relevant to this matter), “[a]ny word, statement, or other information required by or under FIFRA to appear on the label or labeling is not placed thereon.” 7 U.S.C. § 136(q)(1)(E). Thus, devices must bear the establishment number of the final establishment at which the product was produced. 40 C.F.R. §§ 156.10(a)(1)(v), (f).

21. “Establishment” means any place where a pesticide or device or active ingredient used in producing a pesticide is produced or held for distribution or sale. 7 U.S.C. § 136(dd).

22. “Label” means “the written, printed, or graphic matter on, or attached to, the pesticide or device or any to its containers or wrappers.” 7 U.S.C. § 136(p)(1).

23. “Labeling” includes “all labels and all other written, printed, or graphic matter (A) 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 at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.” 7 U.S.C. § 136(p)(2).

IV. COMPLAINANT’S FINDINGS OF FACT AND LAW

24. Respondent is Superstratum Co., a Delaware corporation with its principal place of business located at 2722 Gold Rush Lane, Carrollton, Texas 75007. Respondent is therefore a “person” as defined under 7 U.S.C. § 136(s).

25. On or about June 20, 2023, an EPA-credentialed inspector conducted an inspection of the manufacturer facility under contract with Superstratum to produce products for Respondent (hereafter the “Inspection”). Specifically, during the Inspection, an employee at the manufacturing facility stated that they receive bulk containers of products from Respondent that they then bottle, label, hold for distribution, and distribute per contractual agreement with Respondent.

26. EPA also learned during the Inspection that Respondent sent pre-packaged and pre-labeled products to the facility, which are then held for distribution and distributed by both the manufacturer and Respondent.

27. During the Inspection, EPA observed multiple products bearing certain labeling claims being held for sale or distribution, and collected the product labels and labeling that was provided by Respondent for those products.

28. Based upon the Inspection, review of product labels and labeling, and claims made on Respondent’s website, EPA issued a Stop Sale, Use, or Removal Order (SSURO) pursuant to section 13 of FIFRA that was received by Respondent on December 20, 2023. 7 U.S.C. § 136k. It included a request for additional information that Respondent provided on January 25, 2024.

29. Based on information collected during the June 20, 2023, inspection and information provided by Respondent, EPA determined that Respondent sold or distributed the following FIFRA - regulated products from July 10, 2021, to December 20, 2023, under the Superstratum brand name (collectively referred to hereafter as “Superstratum products”):

- (A) Forever Lawn Turf & Hardscape Protectant
- (B) Superstratum Endurance Pro
- (C) Superstratum Everyday Cleaner
- (D) Superstratum Everyday Cleaner + Smart Polymer Coating Combo Pack
- (E) Superstratum Fabric Odor Protectant
- (F) Superstratum Hypochlorous Acid Pro
- (G) Superstratum Mold & Mildew Protectant
- (H) Superstratum Mold & Mildew Stain Remover
- (I) Superstratum Remediation Bomb (25g, 50g, 100g)
- (J) Superstratum Remediation Bomb Pro (25g, 50g, 100g)
- (K) Superstratum Smart Polymer Coating
- (L) Superstratum Smart Polymer Coating Pro
- (M) Superstratum Smart Polymer Fabric Coating

(N) X-Mold Protectant

30. Respondent operated an interactive website at www.superstratum.co, where Superstratum products were available for purchase directly by consumers by placing the items in an online shopping cart, entering payment information, and having the products shipped to them.

31. Respondent's website, which appeared on all product labels, made the following claims concerning the Superstratum Products:

"The Superstratum System is the first of its kind that addresses both mold AND mycotoxins to heal your sick building."

"Superstratum has turned the tide in the battle against mold."

"The Superstratum mycotoxin removal protocol utilizes a number of strategies for removing the hazardous mold byproducts along with the mold."

32. As shown below, product labels and labeling for Superstratum products contained additional claims interpreted to be pesticidal based on FIFRA's statutory and regulatory definitions and thus Superstratum products were considered by the EPA to be "pesticides" as that term is defined by section 7 U.S.C. § 136(u) because they were intended to prevent, destroy, or mitigate the growth of mold and mildew.

Superstratum Mold & Mildew Stain Remover, Superstratum Everyday Cleaner, and Superstratum Hypochlorous Acid Pro

33. Product labels for Superstratum Mold & Mildew Stain Remover, Superstratum Everyday Cleaner, and Superstratum Hypochlorous Acid Pro listed hypochlorous acid (HOCl) as the active ingredient.

34. Respondent disclosed that all products containing HOCl were manufactured using Envirocleanse-A (EPA Reg. No. 85134-1) a pesticide registered with the EPA as a disinfectant and sanitizer for hard non-porous surfaces for commercial and household use.

35. The label for all three products claimed that they would either clean or "prevent[] visible mold, mildew, and algae stains . . . on indoor and outdoor surfaces."

36. Respondent's website made the following claims about their products containing HOCl:

"Spray onto mold, let sit, and then scrub and easily wash it away."

". . . [is] strong enough to loosen tough bonds that hold microbes onto surfaces. Spray Everyday Cleaner onto mold or fog it into the air to break the molecular bond of microbes and mycotoxins."

Superstratum Endurance Pro, Superstratum Mold & Mildew Protectant, Superstratum Smart Polymer Coating, and Superstratum Smart Polymer Coating Pro

37. Product labels for Superstratum Endurance Pro, Superstratum Mold & Mildew Protectant, Superstratum Smart Polymer Coating, and Superstratum Smart Polymer Coating Pro indicated that they contained two anti-bacterial preservatives: Polyphase P20T (EPA Reg. No. 5383-74) and Mergal K9N (EPA Reg. No. 5383-103).

38. Their labels also claimed that they were "Engineered for resistance from mold," and that the products created a coating that would be "protected by our EPA-registered active ingredients [and created] a shield against mold and mildew growth."

39. Respondent's website contained the following claims about either or both products:

"But despite hundreds of products that remove mold, there has never been a product that can prevent mold from growing – until Superstratum."

"Our unique technologies, such as the Smart Polymer Coatings, provide long-term protection options to address any issue related to mold, mildew, mycotoxins, volatile organic compounds, and other microbes."

Superstratum Everyday Cleaner + Smart Polymer Coating Combo Pack

40. The above claims for Superstratum products also apply to this product.

41. As a result, the Superstratum products included in the combo pack are also considered by the EPA to be pesticides as that term is defined by section 7 U.S.C. § 136(u) because they were intended to prevent, destroy, or mitigate the growth of mold and mildew.

42. Based on definitions in FIFRA and its implementing regulations, the individual products in the Superstratum Everyday Cleaner + Smart Polymer Coating Combo Pack are considered by the EPA

to be pesticide products. Thus, the Superstratum Everyday Cleaner + Smart Polymer Coating Combo Pack is considered by the EPA to be a pesticide product as that term is defined in 40 C.F.R. § 152.3.

Superstratum Fabric Odor Protectant and Superstratum Smart Polymer Fabric Coating

43. The product labels for Superstratum Fabric Odor Protectant and Superstratum Smart Polymer Fabric Coating claimed that the products “[i]nhibit odor causing microbes” and put “an invisible barrier around fabric fibers that protects your fabrics and clothing from the growth of nasty odors caused by mold, mildew, and bacteria.”

44. Respondent’s website included the following claims concerning Superstratum Smart Polymer Fabric Coating:

“By preventing the growth of odor-causing bacteria with Superstratum, your clothes stay fresher and last longer.”

“... can protect surfaces from mold and microbe growth for over 10 years – even in the event of a flood.”

Superstratum Remediation Bomb and Remediation Bomb Pro (25g, 50g, 100g)

45. Product labels for Superstratum Remediation Bomb (25g, 50g, 100g) and Superstratum Remediation Bomb Pro (25g, 50g, 100g) indicated that both products were intended to “purif[y] the air” through the “controlled release of chlorine dioxide gas” (ClO₂).

46. Respondent’s website also made the following claims about both products:

“This is the same technology used at the Capitol Building to remediate after the Anthrax incident in 2001, extremely effective at denaturing harmful substances and VOCs hiding in our homes.”

“Our chlorine dioxide gas remediation bombs use the process of oxidation to break down mold spores, mycotoxins, and other VOCs . . .”

Forever Lawn Turf & Hardscape Protectant

47. Product labeling for Forever Lawn Turf & Hardscape Protectant contained Superstratum Smart Polymer Coating and its label included the following claims:

Forever Lawn Turf & Hardscape Protectant creates a coating that is “a shield against mold and mildew growth.”

“Stop Mold, Mildew, & Bacteria.”

X-Mold Pro Mold & Mildew Protectant

48. X-Mold Pro Mold & Mildew Protectant also contained Superstratum Smart Polymer

Coating and the label for the product included the following claims:

XMold Pro Mold & Mildew Protectant creates a coating that is “a shield against mold and mildew growth.”

“XMold Pro with Superstratum smart polymers comes to life with moisture, releasing our EPA-registered active ingredients to inhibit biological growth in humid, wet conditions.”

Carry Ion Portable Air Purifier, KHAOS Air Purifier, MCI Protect Air, and MCI PRV24K

49. Respondent claimed on its website that Carry Ion Portable Air Purifier, KHAOS Air Purifier, MCI Protect Air, and MCI PRV24K (hereafter “Covered Devices”) use “Multi-Cluster Ionization (MCI) technology,” which incorporates “passive HEPA filtration and active Dielectric Barrier Ionization (DBI) and [ultraviolet photo-catalytic oxidation] PCO hydroxyl purification.”

50. Respondent’s website contained the following claims concerning the MCI technology component in each Covered Device:

“[N]ot only destroys biological contaminates traveling through the [dielectric barrier ionizer cell], but produces a purifying plasma which breaks down odors, mold, bacteria, and viruses throughout the home and office. Photo Catalytic Oxidation reactors have been proven to reduce dangerous pathogens by over 99% in 24 hours or less.”

MCI “effectively reduces mold, mildew, bacteria, viruses, odors, volatile organic compounds [], and the odors associated with them.”

51. Thus, the Covered Devices were instruments or contrivances marketed with claims for use in trapping, destroying, repelling, or mitigating mold, mildew, bacteria, and viruses and are therefore regulated by the EPA as devices pursuant to FIFRA section 2(h). 7 U.S.C. § 136(h).

COUNTS 1 – 1,322

Sale or Distribution of Unregistered Pesticides

*Superstratum Mold & Mildew Stain Remover, Superstratum Everyday Cleaner, and
Superstratum Hypochlorous Acid Pro*

52. Complainant incorporates the factual allegations in the preceding paragraphs of this Consent Agreement by reference as if fully stated herein.

53. The Inspection report and product records provided in response to the SSURO indicate Respondent sold or distributed Superstratum Mold & Mildew Stain Remover, which was rebranded in 2022 as Superstratum Everyday Cleaner, and the higher concentration version of the Everyday Cleaner called Superstratum Hypochlorous Acid Pro.

54. The Superstratum Mold & Mildew Stain Remover, Superstratum Everyday Cleaner, and Superstratum Hypochlorous Acid Pro were never and are not currently EPA-registered pesticides, nor were they exempt from FIFRA's registration requirement.

55. Each sale or distribution of an unregistered pesticide is considered by EPA to constitute an unlawful act under FIFRA section 12(a)(1)(A) for which civil penalties may be assessed pursuant to FIFRA section 14(a). 7 U.S.C. §§ 136j(a)(1)(A) and 136l(a).

56. Respondent sold or distributed Superstratum Mold & Mildew Stain Remover, Superstratum Everyday Cleaner, and Superstratum Hypochlorous Acid Pro on 1,322 occasions from July 10, 2021, to December 20, 2023, in violation of FIFRA section 12(a)(1)(A). 7 U.S.C. § 136j(a)(1)(A).

COUNTS 1,323 – 2,238

Sale or Distribution of Unregistered Pesticides

*Superstratum Endurance Pro, Superstratum Mold & Mildew Protectant,
Superstratum Smart Polymer Coating, and Superstratum Smart Polymer Coating Pro*

57. Complainant incorporates the factual allegations in the preceding paragraphs of this Consent Agreement by reference as if fully stated herein.

58. Product records provided by Respondent indicate that Superstratum Endurance Pro product was rebranded in 2021 as Superstratum Mold & Mildew Protectant product. Superstratum Mold & Mildew Protectant was rebranded in 2022 as Superstratum Smart Polymer Coating and a higher concentration version listed as Superstratum Smart Polymer Coating Pro.

59. The Superstratum Endurance Pro, Superstratum Mold & Mildew Protectant, Superstratum Smart Polymer Coating, and Superstratum Smart Polymer Coating Pro were never and are not currently EPA-registered pesticides, nor were they exempt from FIFRA's registration requirement.

60. Each sale or distribution of an unregistered pesticide is an unlawful act under FIFRA section 12(a)(1)(A) for which civil penalties may be assessed pursuant to FIFRA section 14(a). 7 U.S.C. §§ 136j(a)(1)(A) and 136l(a).

61. Respondent sold or distributed Superstratum Endurance Pro, Superstratum Mold & Mildew Protectant, Superstratum Smart Polymer Coating, and Superstratum Smart Polymer Coating Pro on 916 occasions from July 10, 2021, to December 20, 2023, which EPA considers to have been in violation of FIFRA section 12(a)(1)(A). 7 U.S.C. § 136j(a)(1)(A).

COUNTS 2,239 – 2,757

Sale or Distribution of Unregistered Pesticides

Superstratum Everyday Cleaner + Smart Polymer Coating Combo Pack

62. Complainant incorporates the factual allegations in the preceding paragraphs of this Consent Agreement by reference as if fully stated herein.

63. Superstratum Everyday Cleaner + Smart Polymer Coating Combo Pack was never and is not currently an EPA-registered pesticide nor was it exempt from FIFRA's registration requirement.

64. Each sale or distribution of an unregistered pesticide is an unlawful act under FIFRA section 12(a)(1)(A) of FIFRA for which civil penalties may be assessed under FIFRA section 14(a). 7 U.S.C. §§ 136j(a)(1)(A) and 136l(a).

65. Respondent sold or distributed Superstratum Everyday Cleaner + Smart Polymer Coating Combo Pack on 519 occasions from July 10, 2021, to December 20, 2023, which EPA considers to have been in violation of FIFRA section 12(a)(1)(A). 7 U.S.C. § 136j(a)(1)(A).

COUNTS 2,758 – 2,949

Sale or Distribution of Unregistered Pesticides

Superstratum Fabric Odor Protectant and Superstratum Smart Polymer Fabric Coating

66. Complainant incorporates the factual allegations in the preceding paragraphs of this Consent Agreement by reference as if fully stated herein.

67. The Superstratum Fabric Odor Protectant was rebranded as the Superstratum Smart Polymer Fabric Coating in 2023.

68. Superstratum Fabric Odor Protectant and Superstratum Smart Polymer Fabric Coating were not and are not currently EPA-registered pesticides, nor were they exempt from FIFRA's registration requirement.

69. Each sale or distribution of an unregistered pesticide is an unlawful act under FIFRA section 12(a)(1)(A) for which civil penalties may be assessed pursuant to FIFRA section 14(a). 7 U.S.C. §§ 136j(a)(1)(A) and 136l(a).

70. Respondent sold or distributed the Superstratum Fabric Odor Protectant and Superstratum Smart Polymer Fabric Coating on 192 occasions, from July 10, 2021, to December 20, 2023, which EPA considers to have been in violation of FIFRA section 12(a)(1)(A). 7 U.S.C. § 136j(a)(1)(A).

COUNTS 2,950 – 5,883

Sale or Distribution of Unregistered Pesticides

Superstratum Remediation Bomb and Remediation Bomb Pro (25g, 50g, 100g)

71. Complainant incorporates the factual allegations in the preceding paragraphs of this Consent Agreement by reference as if fully stated herein.

72. Superstratum Remediation Bomb and Superstratum Remediation Bomb Pro were not and are not currently EPA-registered pesticides, nor were they exempt from FIFRA's registration requirement.

73. Each sale or distribution of an unregistered pesticide is an unlawful act under FIFRA section 12(a)(1)(A) for which civil penalties may be assessed pursuant to FIFRA section 14(a). 7 U.S.C. §§ 136j(a)(1)(A) and 136l(a).

74. Respondent sold or distributed Superstratum Remediation Bomb (25g, 50g, 100g) and Superstratum Remediation Bomb Pro (25g, 50g, 100g) on 2,934 occasions from July 10, 2021, to December 20, 2023, which EPA considers to have been in violation of FIFRA section 12(a)(1)(A). 7 U.S.C. § 136j(a)(1)(A).

COUNT 5,884
Sale or Distribution of Unregistered Pesticides
Forever Lawn Turf & Hardscape Protectant

75. Complainant incorporates the factual allegations in the preceding paragraphs of this Consent Agreement by reference as if fully stated herein.

76. Forever Lawn Turf & Hardscape Protectant was not and is not currently an EPA-registered pesticide, nor was it exempt from FIFRA's registration requirement.

77. Each sale or distribution of an unregistered pesticide is an unlawful act under FIFRA section 12(a)(1)(A) for which civil penalties may be assessed pursuant to FIFRA section 14(a). 7 U.S.C. §§ 136j(a)(1)(A) and 136l(a).

78. Respondent sold or distributed the Forever Lawn Turf & Hardscape Protectant on one occasion from July 10, 2021, to December 20, 2023, which EPA considers to have been in violation of FIFRA section 12(a)(1)(A). 7 U.S.C. § 136j(a)(1)(A).

COUNT 5,885
Sale or Distribution of Unregistered Pesticides
X-Mold Pro Mold & Mildew Protectant

79. Complainant incorporates the factual allegations in the preceding paragraphs of this Consent Agreement by reference as if fully stated herein.

80. This product was another private label for Superstratum Endurance Pro that was produced for a short time in 2022.

81. X-Mold Pro Mold & Mildew Protectant was not and is not currently an EPA-registered pesticide, nor was it exempt from FIFRA's registration requirement.

82. Each sale or distribution of an unregistered pesticide is an unlawful act under FIFRA section 12(a)(1)(A) for which civil penalties may be assessed pursuant to FIFRA section 14(a). 7 U.S.C. §§ 136j(a)(1)(A) and 136l(a).

83. Respondent sold or distributed X-Mold Pro on one occasion from July 10, 2021, to December 20, 2023, which EPA considers to have been in violation of FIFRA section 12(a)(1)(A). 7 U.S.C. § 136j(a)(1)(A).

COUNTS 5,886 – 5,890
Sale or Distribution of Misbranded Devices
Carry Ion Portable Air Purifier, KHAOS Air Purifier, MCI Protect Air, MCI PRV24K

84. Complainant incorporates the factual allegations in the preceding paragraphs of this Consent Agreement by reference as if fully stated herein.

85. The Carry Ion Air Purifier; KHOAS Air Purifier, MCI Protect Air, and MCI PRV24K (collectively, “Covered Devices”) were available for purchase on Respondent’s website and held in its inventory according to documents provided by Respondent. None of the labeling for the Covered Devices collected during the Inspection or provided by Respondent bore the establishment number of the final establishment at which the product was produced, in violation of 40 C.F.R. §§ 156.10(a)(1)(v), (f).

86. Each sale or distribution of a misbranded device is an unlawful act under FIFRA section 12(a)(1)(F) for which civil penalties may be assessed pursuant to FIFRA section 14(a). 7 U.S.C. §§ 136j(a)(1)(F) and 136l(a).

87. Respondent sold or distributed the Covered Devices on five occasions from July 10, 2021, to December 20, 2023, which EPA considers to have been in violation of FIFRA section 12(a)(1)(F). 7 U.S.C. § 136j(a)(1)(F).

V. CIVIL PENALTY

88. Respondent agrees to pay a civil penalty in the amount of **TWELVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$12,250.00)** within 30 days of the Final Order ratifying this Consent Agreement being filed with the Clerk of the Environmental Appeals Board (“Effective Date”).

89. The penalty was calculated based upon the statutory factors set forth in FIFRA section 14(a)(4), including the size of Respondent’s business, the effect of paying a civil penalty on Respondent’s ability to continue in business, and the gravity of the violation. 7 U.S.C. § 136l(a)(4). The factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s FIFRA Enforcement Response Policy, dated December 2009 (“ERP”), and the appropriate inflationary adjustment pursuant to 40 C.F.R. pt. 19.

90. The penalty is also based on Respondent's "ability to pay claim" and EPA's analysis of Respondent's financial information. EPA determined that Respondent has a limited ability to pay. Consequently, and in accordance with applicable law, EPA determined that the above penalty amount is appropriate to settle this action.

91. Respondent shall pay the penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

92. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Consent Agreement and Final Order, Docket No. FIFRA-HQ-2024-5002.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Emilio Cortes, Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW (Mail Code 1103M)
Washington, D.C. 20460-0001
Clerk_EAB@epa.gov

Haley C. Todd, Attorney-Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (Mail Code 2249A)
Washington, D.C. 20001
Todd.haley@epa.gov

Kimberly Tonkovich, Life Scientist
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street Southwest
Atlanta, Georgia 30303
Tonkovich.Kimberly@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

- c. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

93. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the penalty, interest, or other charges and penalties per this Consent Agreement and Final Order, the entire unpaid balance of the penalty and all accrued interest shall become immediately due and owing and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Effective Date. If the penalty is paid in full within 30 days, interest accrued is waived. If the penalty is not paid in full within 30 days, interest will continue to accrue until any unpaid portion of the penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the Internal Revenue Service’s (IRS) standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed a monthly charge to cover EPA’s costs of processing and handling overdue debts.
- c. Late Payment Penalty. A late payment penalty of 6% per annum will be assessed monthly on all debts, including any unpaid portion of the penalty, interest, late payment penalties, and other charges that remain delinquent more than 90 days.

94. Late Penalty Actions. In addition to the amounts described in the prior paragraph, if Respondent fails to timely pay any portion of the penalty, interest, or other charges and penalties per this

Consent Agreement and Final Order, EPA may take additional actions. Such actions may include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency pursuant to 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the IRS for offset against income tax refunds, 40 C.F.R. pt. 13, subpts. C and H.
- c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the amount outstanding pursuant to 7 U.S.C. § 136l(a)(5).

95. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the outstanding principal penalty amount.

96. Payments made pursuant to this Consent Agreement and Final Order are not deductible for federal tax purposes. All payments set forth herein constitute an amount paid or incurred by suit, settlement agreement, or otherwise at the direction of a government entity in relation to a violation of law. 26 U.S.C. § 162(f)(1); 26 C.F.R. § 1.162-21(a).

VI. TERMS OF CONSENT AGREEMENT

97. The Parties agree to accept digital or original signatures and consent to service of this Consent Agreement and Final Order via email to Haley C. Todd at todd.haley@epa.gov (for Complainant), and Lawrence E. Culleen at Lawrence.Culleen@arnoldporter.com (for Respondent). An

email response confirming receipt, automated confirmation of email delivery, or an automated read receipt shall be evidence of effective service.

98. For the purposes of this proceeding only and as required by 40 C.F.R. § 22.18(b)(2), Respondent agrees to the terms below and otherwise within this Consent Agreement and Final Order:

- (A) Admits to all jurisdictional allegations contained herein;
- (B) Neither admits nor denies any specific factual allegations provided herein;
- (C) Consents to the assessment of this civil penalty;
- (D) Consents to the issuance of, and compliance with, any additional terms or conditions contained herein;
- (E) Agrees to make payment and fulfill all tax reporting according to the terms of this Consent Agreement and Final Order;
- (F) Waives any right to contest EPA's jurisdiction concerning the execution or enforcement of this Consent Agreement and Final Order;
- (G) Waives its right to contest any allegations contained herein; and
- (H) Waives all rights to obtain administrative or judicial review of this Consent Agreement and Final Order.

99. This Consent Agreement and Final Order resolves Respondent's liability only for civil penalties for the specific violations alleged herein.

100. Respondent shall bear its own costs and attorney's fees associated with this proceeding.

101. Respondent certifies to EPA that, to the best of its knowledge and belief, that it is currently in compliance with any statutory or regulatory provisions associated the violations alleged in this Consent Agreement.

102. Respondent certifies that all information or representations made or supplied in this matter was true, accurate, and complete at the time of submission and there has been no material change concerning the truthfulness, accuracy, or completing of such information or representation.

103. Respondent acknowledges that submission of false or misleading information may result further civil or criminal liability, under 18 U.S.C. § 1001, and that EPA has the right to institute further actions to recover appropriate relief upon obtaining evidence that any information provided and/or representations made by Respondent were false, inaccurate, or misleading.

104. Respondent acknowledges that this Consent Agreement and Final Order may contain identifying information such as names, mailing addresses, and email addresses that will be available to the public via a searchable database upon filing.

105. Respondent agrees that this Consent Agreement and Final Order does not contain any confidential business information, trade secrets, or information otherwise protected from disclosure under any applicable federal law.

106. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable provisions of FIFRA and other federal, state, and local laws and regulations. Nor shall it constitute a waiver, suspension, or modification of the requirements of the FIFRA and any regulations promulgated thereunder.

107. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment.

108. EPA reserves all rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order.

VII. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

109. This Consent Agreement and Final Order shall apply to and be binding upon EPA, Respondent, and Respondent's officers, directors, employees, contractors, successors, agents, and assigns.

110. Any person who signs this Consent Agreement on behalf of Respondent certifies that they are fully authorized to execute this Consent Agreement and to legally bind that party to the terms and conditions of this Consent Agreement and proposed Final Order.

111. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein.

112. There are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

113. The Effective Date of this Consent Agreement and proposed Final Order is the date on which the Consent Agreement, signed by all Parties, is filed by the Clerk of the Board with the ratified Final Order, signed by the Environmental Appeals Board.

WE HEREBY AGREE TO THIS:

**FOR RESPONDENT:
SUPERSTRATUM CO.**



Seth Jones, CEO
Superstratum Co.
Post Office Box 13130
Ruston, Louisiana 71273

Sep 06 2024

Date



Lawrence E. Culleen, Partner
Arnold & Porter
601 Massachusetts Avenue, Northwest
Washington, D.C. 20001-3743

September 9, 2024

Date


In the matter of Superstratum Co.
Docket No. FIFRA-HQ-2024-5002
Consent Agreement & Final Order

WE HEREBY AGREE TO THIS:

FOR COMPLAINANT:


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**GREGORY
SULLIVAN**

 Digitally signed by GREGORY
SULLIVAN
Date: 2024.09.19 11:18:12 -04'00'

Gregory Sullivan, Director
Waste & Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency

CHRISTINA COBB

 Digitally signed by CHRISTINA COBB
Date: 2024.09.10 15:02:50 -04'00'

O/b/o Haley C. Todd, Attorney-Advisor
Waste & Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Superstratum Co., Docket No. FIFRA-HQ-2024-5002, were sent to the following persons in the manner indicated:

By E-mail:

For EPA

Haley C. Todd, Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
Todd.haley@epa.gov

Christina Cobb, Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
cobb.christina@epa.gov

Kimberly Tonkovich, Life Scientist
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street Southwest
Atlanta, Georgia 30303
Tonkovich.Kimberly@epa.gov

For Respondent

Seth Jones, CEO
Superstratum Co.
Post Office Box 1313 0
Ruston, Louisiana 71273
Seth@superstratum.com

Lawrence E. Culleen, Partner
Arnold & Porter
601 Massachusetts Avenue, NW
Washington, D.C. 20001-3743
Lawrence.Culleen@arnoldporter.com

Dated: Dec 04, 2024

Tommie Madison

Tommie Madison
Clerk of the Board