

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2010 DEC 29 AM 11:30

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

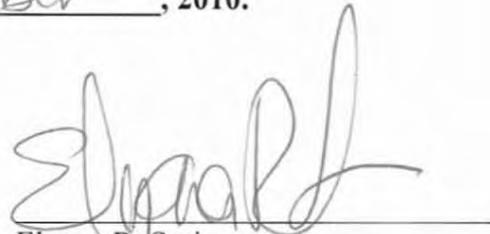
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2011-0001

IN THE MATTER OF:)	
)	
CROCS, INC.)	FINAL ORDER
6328 Monarch Pl.)	
Longmont, CO 80503)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 29th DAY OF December, 2010.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 DEC 29 AM 11:30

Docket No. **FIFRA-08-2011-0001**

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EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Crocs, Inc.) COMBINED COMPLAINT AND
6328 Monarch Pl.) CONSENT AGREEMENT
Longmont, CO 80503,)
)
Respondent.)

Complainant, United States Environmental Protection Agency (EPA), Region 8, and Respondent, Crocs, Inc., by their undersigned representatives, hereby consent and agree as follows:

A. JURISDICTION

1. This Combined Complaint and Consent Agreement (consent agreement) is issued to Crocs, Inc. (Respondent) for selling or distributing unregistered pesticides in violation of the Federal Insecticide, Fungicide, and Rodenticide Act section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A).
2. The undersigned EPA officials enter into this consent agreement under the authority vested in the Administrator of EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
3. This section authorizes EPA to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against Respondent who has violated a requirement or prohibition of FIFRA.
4. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This consent agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

B. ALLEGED VIOLATIONS

1. Respondent, a Colorado corporation, is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
2. The term "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.” See FIFRA § 2(gg), 7 U.S.C. § 136(gg).

3. From on or about May 1, 2009 through April 30, 2010, Respondent distributed or sold the following shoe products to various retailers throughout the United States: (1) Rx Silver Insoles; (2) Rx Medical Custom Cloud; (3) Rx Silver Cloud; (4) Rx Cloud; (5) Rx Relief; (6) Rx Medical Sliver Fox; (7) Specialist; (8) Specialist Vent; (9) Realtree Yukon; (10) South Carolina Beach; (11) Prepair Clog; (12) Prepair Flip; and (13) Troika.
4. At the time when the shoe products listed in this consent agreement were sold, Respondent claimed that they killed or controlled growth of bacteria.
5. Bacteria are “pests” as that term is defined in section 2(t) of FIFRA, 7 U.S.C. § 136(t).
6. A “pesticide” means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3(s). The shoe products listed in paragraph 3 are “pesticides.”
7. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any unregistered pesticide.
8. Complainant alleges that each distribution or sale of the shoe products made during the time period described in this consent agreement was a violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
9. Upon consideration of the nature, circumstances, extent and gravity of the violation and Respondent’s ability to continue in business, the size of Respondent’s business, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, its good faith and immediate effort to comply once informed of the violations, other matters as justice may require, and upon consideration of the entire record herein, EPA is agreeing in order to settle the violation based upon the findings noted above, for the total civil penalty amount of **\$230,000**.

C. CIVIL PENALTY

1. Respondent admits that EPA has jurisdiction over the subject matter alleged in this consent agreement, neither admits nor denies the specific factual allegations contained in this consent agreement, and consents to the assessment of the penalty as stated in this consent agreement.
2. Respondent consents and agrees to pay a civil penalty in the amount of TWO HUNDRED AND THIRTY THOUSAND dollars (\$230,000) in the manner described below:

- a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this consent agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the U.S. Bank. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case (**Crocs, Inc.; Docket No. FIFRA-08-2011-0001**), for the above-described amount, payable to "Treasurer, United States of America" to:

(via REGULAR MAIL):

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

(via WIRE TRANSFERS):

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

(via OVERNIGHT MAIL):

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Ms. Natalie Pearson (Tel.: 314-418-4087)

(via ACH (also known as REX or remittance express)):

Automated Clearinghouse (ACH) for receiving US currency:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 - checking
Environmental Protection Agency
808 17th Street NW
Washington DC 20074
Contact: Jesse White, 301-887-6548

(via ON LINE PAYMENT):

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV.

Enter "sfo 1.1" in the search field. Open form and complete required fields.

A copy of the check shall be sent simultaneously to:

Ms. Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

D. TERMS AND CONDITIONS

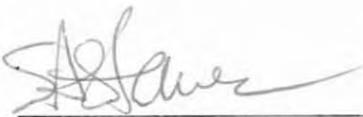
1. This consent agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This consent agreement contains all terms of the settlement agreed to by the parties.
2. Nothing in this consent agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent agreement.
3. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this consent agreement and to bind the party he/she represents to the terms and conditions of this consent agreement.
4. Each party shall bear its own costs and attorneys fees in connection with this matter.
5. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this consent agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this consent agreement to EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
6. This consent agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full resolution of the United States' claim for civil penalties for the violations alleged herein.
7. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
8. Nothing in this consent agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
9. Failure by Respondent to comply with any of the terms of this consent agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

In the Matter of: Crocs, Inc.
Docket No: FIFRA-08-2011-0001
(Continued)

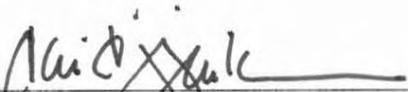
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement,
Compliance and Environmental Justice,

Complainant.

Date: DEC 29 2010

By: 
Sandra A. Stavnes, Director
Technical Enforcement Program

Date: DEC 17 2010

By: 
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program

Date: 12/17/2010

By: 
Eduardo Quintana, Senior Attorney
Legal Enforcement Program

In the Matter of: Crocs, Inc.
Docket No: FIFRA-08-2011-0001
(Continued)

Crocs, Inc.,
Respondent.

Date: 17 DEC 2010

By:



Name, Title: DANIEL P. HART, EIP LEGAL + ADMINISTRATIVE OFFICER

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT and CONSENT AGREEMENT/FINAL ORDER** in the matter of **CROCS, INC.; DOCKET NO.: FIFRA-08-2011-0001** was filed with the Regional Hearing Clerk on December 29, 2010.

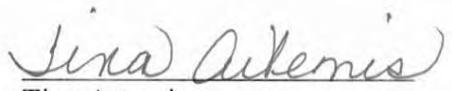
Further, the undersigned certifies that a true and correct copy of the documents were delivered via e-mail to Eduardo Quintana, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on December 29, 2010 to:

Elizabeth V. McNulty, Esq.
Hewitt Wolensky, LLP.
4041 MacArthur Blvd., Suite 300
Newport Beach, CA 92660-2511

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

December 29, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk

