



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

January 16, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No.7011 1150 0000 2643 8241

Mr. R. Lee Allen

Fas-Pak, Inc.

411 Fairfield Ave.

Michigan City, Indiana 46360

Consent Agreement and Final Order In the Matter of  
Fas – Pak, Inc., Docket No. **FIFRA-05-2015-0020**

Dear Mr. Allen:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on January 16, 2015, with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,860 is to be paid in the manner described in paragraph 40. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by February 17, 2015 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Terence Bonace".

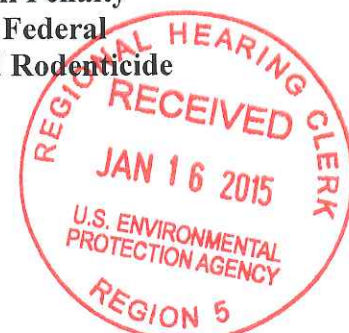
for Terence Bonace  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
Fas-Pak, Inc. )  
Michigan City, Indiana, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2015-0020  
Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)



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 Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. The Respondent is Fas-Pak, Inc. (Fas-Pak), a corporation doing business in the State of Indiana.

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 to 136y.

### **Statutory and Regulatory Background**

10. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it is unlawful for any person to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration under Section 3 of FIFRA.

11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person to distribute or sell to any person any pesticide which is adulterated or misbranded.

12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false and misleading in any particular.

13. 40 C.F.R. §§ 156.10(a)(1)(v) and 156.10(f) state that every pesticide label shall bear the producing establishment number of the final establishment at which the product was produced.

14. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

15. 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.” 7 U.S.C. § 136(gg).

16. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

17. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

18. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

#### General Allegations

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

20. Respondent is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

21. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 401 Darlington Street, LaPorte, Indiana.

22. On or about September 23, 2013, an inspector employed by Office of the Indiana State Chemist and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business at 401 Darlington Street, LaPorte, Indiana.

23. During the inspection, the inspector collected a sample of **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2, that was packaged, labeled and released for shipment by Respondent.

24. **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2, is a pesticide as defined by

Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. In connection with the registration of **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2, EPA issued an accepted label for **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2, on or about November 25, 2008 and an amended accepted label on or about July 5, 2012.

26. The label on the sample of **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2, collected during the inspection, listed the following two establishment numbers: EPA Establishment No. 075371-IN-003 and EPA Establishment No. 52379-MI-002.

27. The label did not indicate which of the two listed establishment numbers represented the final producing establishment at which **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2, was produced.

28. The sample of **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2, also included a tag on the bottle that stated: “Most Powerful Disinfectant Guaranteed.”

29. The claim “Most Powerful Disinfectant Guaranteed” substantially differs from any claim approved in the November 25, 2008 and July 5, 2012 accepted labels for **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2.

#### Count 1

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

31. On or about September 23, 2013, Respondent distributed or sold **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2, with a label that was false and misleading because the label listed two establishment numbers without any identification of which one was the final establishment at which the product was produced.

32. Respondent’s distribution or sale of the misbranded pesticide, **Glisten Dishwasher**

**Magic**, EPA Reg. No. 9902-2, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

33. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

### **Count 2**

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

35. On or about September 23, 2013, Respondent distributed or sold **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2, with claims that were substantially different from any claims made for it as part of the statement required in connection with its registration.

36. Respondent's distribution or sale of **Glisten Dishwasher Magic**, EPA Reg. No. 9902-2, with substantially different claims than those approved at the time of registration constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

37. Respondent's violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

### **Civil Penalty and Other Relief**

38. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

39. Based on an evaluation of the facts alleged in this complaint, the factors in Section

14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$4,860.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,860 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check must note "In the Matter of Fas-Pak, Inc.," and the docket number of this CAFO.

41. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Terence Bonace (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Nidhi K. O'Meara (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

43. If Respondent does not pay the civil penalty in a timely manner, 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.

44. 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**

45. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

46. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

50. 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.

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


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



**In the Matter of:  
Fas-Pak, Inc.**

**Fas-Pak, Inc., Respondent**

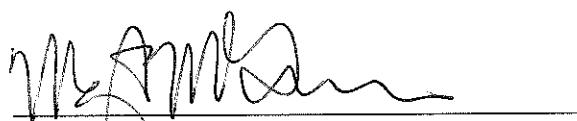
11/19/14  
Date

  
Edmond Wing,  
Vice President  
Fas-Pak, Inc.

**In the Matter of:  
Fas-Pak, Inc. Company**

**United States Environmental Protection Agency, Complainant**

1/7/2015  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division


**In the Matter of:**  
**Fas-Pak, Inc.**  
**Docket No. FIFRA-05-2015-0020**

**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.

1/12/2015

Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Fas – Pak, Inc., was filed on January, 16, 2015, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7011 1150 0000 2643 8159, a copy of the original to the Respondent:

Mr. R. Lee Allen  
Director of Household Products  
Fas-Pak, Inc.  
411 Fairfield Ave.  
Michigan City, Indiana 46360

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Nidhi K. O'Meara, Assistant Regional Counsel, ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. **FIFRA-05-2015-0020**