



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

August 2, 2022

VIA EMAIL ONLY

Mr. Clayton Smith
Chief Operating Officer
G. M. Industrial, LLC d/b/a Zenex International
One Zenex Circle
Cleveland, Ohio 44146

csmith@gmichemical.com

Consent Agreement and Final Order
In the Matter of Zenex International
Docket Number **FIFRA-05-2022-0019**

Mr. Smith:

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 August 2, 2022 with the Regional Hearing Clerk.

The civil penalty in the amount of \$235,886 is to be paid in the manner described in paragraphs 124-125. Please be certain that your company's name and the docket number of this case are written on both the transmittal letter and the check, or in the comments field if you are paying by electronic funds transfer. Due within 90 calendar days of the filing date is \$59,303.21, \$59,303.21 within 180 days of the filing date, \$59,303.21 within 270 days of the filing date, and \$59,303.21 within 360 days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

**ABIGAIL
WESLEY**

Digitally signed by
ABIGAIL WESLEY
Date: 2022.07.14
11:27:15 -05'00'

Abigail Wesley
Enforcement Officer
Pesticides and Toxics Compliance Section

cc: Lisa R. Burchi
Bergeson & Campbell PC
lburchi@lawbc.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2022-0019
)	
Zenex International)	Proceeding to Assess a Civil Penalty
Cleveland, Ohio)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	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, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region

3. The Respondent is G. M. Industrial, LLC, a limited liability company organized under the laws of the State of Ohio doing business as Zenex International (Zenex).

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 as of the date of its execution of this CAFO, it has taken appropriate actions to address and correct the alleged FIFRA violation set forth in this CAFO, and to the best of its knowledge, it is in compliance with the requirements of FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

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

11. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” as “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 also 40 C.F.R. §152.3.

12. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” See also 40 C.F.R. §152.3.

13. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “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 the EPA] declares to be a pest under Section 25(c)(1) of FIFRA.” See also 40 C.F.R. § 152.5.

14. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “producer” as “a person who manufactures, prepares, compounds, propagates, or processes any pesticide or active ingredient used in producing a pesticide.”

15. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as “written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

16. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as “all labels and all other written, printed, or graphic matter 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.”

17. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states that no person in any State may distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

18. 40 C.F.R. § 152.132 states that a registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.”

19. 40 C.F.R. § 152.132 states that supplemental distribution is permitted upon notification to the Agency if all of the following conditions are met: (a) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor’s company number, the additional brand name(s) to be used, and the registration

number of the registered product, (b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product, (c) The distributor product is not repackaged (remains in the producer's unopened containers), (d) The label of the distributor product is the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor's company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary, and (e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

20. 40 C.F.R § 156.10(a)(1) states that every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in 40 C.F.R. Part 156.

21. 40 C.F.R § 156.10(a)(1)(v) states that the contents of a label must show clearly and prominently, the producing establishment number.

22. 40 C.F.R § 156.10(f) states, in pertinent part, that the producing establishment registration number preceded by the phrase "EPA Est.," of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container.

23. Section 7(a) of FIFRA, 7 U.S.C. § 136c(a), states no person shall produce a pesticide subject to FIFRA or an active ingredient used in producing a pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with EPA. See also 40 C.F.R. § 167.20.

24. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), states that the Administrator may

prescribe regulations requiring producers, registrants, and applicants for registration to maintain records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of FIFRA.

25. 40 C.F.R. § 169.2 states, in pertinent part, that all producers of pesticides, devices, or active ingredients used in producing pesticides subject to this Act, including pesticides produced pursuant to an experimental use permit and pesticide, devices, and pesticide active ingredients produced for export, shall maintain the following records: (a) Records showing the product name, EPA Registration Number, Experimental Permit Number if the pesticide is produced under an Experimental Use Permit, amounts per batch and batch identification (numbers, letters, etc.) of all pesticides produced.

26. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), defines a pesticide as “misbranded” if its label does not bear the registration number assigned under section 136e of [FIFRA] to each establishment in which it was produced.

27. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

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

29. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i) states that it is unlawful for any person to refuse to prepare, maintain, or submit any records required by or under section 5, 7, 8, 11 or 19 of FIFRA.

30. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states it is unlawful for any

person who is a producer to violate any of the provisions of Section 7 of FIFRA.

31. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), states that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$7,500 for each offense that occurred after January 12, 2009 through November 2, 2015. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. Part 19, increased the amount that can be assessed to \$20,528 for each offense occurring after November 2, 2015 and assessed after December 23, 2020. See 85 Fed. Reg. 247 (December 23, 2020).

Allegations

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

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

34. At all times relevant to this CAFO, Zenex owned or operated a place of business located at One Zenex Circle, Cleveland, Ohio 44146 (facility).

35. On or about March 15, 2019, an inspector employed with the Michigan Department of Agriculture and Rural Development (MDARD) conducted an inspection at Michigan Company, Inc. doing business as Michco, located at 2011 North High Street, Lansing, Michigan 48906 (“Marketplace Inspection”).

36. On or about February 24, 2021, an inspector employed with the Ohio Department of Agriculture (ODA) conducted an inspection at the Zenex facility (“Inspection”).

Zenatize Foam Disinfectant Cleaner (Item #494955)

Zenatize Foam Country Disinfectant Cleaner (Item #494935)

37. During the Marketplace Inspection, the inspector collected photographs of labels, receiving and distribution records for **Zenatize Foam Disinfectant Cleaner** (Item #494955), identified on the product label as EPA Registration Number (EPA Reg. No.) 10900-57-74424.

38. Receiving records collected during the Marketplace Inspection for calendar year 2018 identified Zenex International as the distributor of **Zenatize Foam Disinfectant Cleaner** (Item #494955) to Michco.

39. During the Inspection, the inspectors collected labeling, production, receiving and distribution records for **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), identified on each respective label as EPA Reg. No. 10900-57-74424.

40. **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), identified as EPA Reg. No. 10900-57-74424, are “pesticides” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) because they are intended for preventing, destroying, repelling, or mitigating certain pests.

41. Prior to February 26, 2019, **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner**, identified as EPA Reg. No. 10900-57-74424, were not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

42. During calendar year 2018, Respondent distributed or sold unregistered **Zenatize Foam Disinfectant Cleaner** (Item #494955), identified by EPA Reg. No. 10900-57-74424, on at least 5 separate occasions.

43. Respondent’s distribution or sale of the unregistered pesticide, **Zenatize Foam Disinfectant Cleaner** (Item #494955) identified by EPA Reg. No. 10900-57-74424, constitutes

5 unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) because they were not registered under Section 3 of FIFRA at the time of sale or distribution.

44. On or about February 26, 2019, EPA approved a Supplemental Distribution of a Registered Pesticide Product Form (EPA Form 8570-5) for the supplemental distribution of 881 Foaming Germicidal Cleaner, EPA Reg. No. 10900-57, registered to Sherwin-Williams Consumer Brands Group, for Zenex International. The supplemental distributor product was registered as **Zenatize Foam Disinfectant Cleaner** with an alternate brand name of **Zenatize Foam Country Disinfectant Cleaner** and assigned EPA Reg. No. 10900-57-74424.

45. The labels for **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), EPA Reg. No. 10900-57-74424, that were collected during the Inspection, failed to contain a valid EPA Establishment Number (EPA Est. No.) as required by 40 C.F.R. § 156.10(a)(1)(v).

46. The labels for **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), EPA Reg. No. 10900-57-74424, for distributions occurring during calendar year 2020, were misbranded, as they failed to contain a valid EPA Est. No.

47. During calendar year 2020, Respondent distributed or sold **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), EPA Reg. No. 10900-57-74424, on at least 142 separate occasions.

48. Respondent's distribution or sale of the misbranded pesticides, **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), EPA Reg. No. 10900-57-74424, constitutes 142 unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

49. The production records for **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), EPA Reg. No. 10900-57-74424, that were collected during the Inspection, failed to contain the EPA Reg. No. as required by 40 C.F.R. § 169.2.

50. During calendar year 2020, Respondent failed to maintain complete production records for **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), on at least 2 separate occasions.

51. Respondent's failure to maintain complete production records for **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), EPA Reg. No. 10900-57-74424, constitutes 2 unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Zenatize Disinfectant (Item #495545)
Zenatize Citrus Disinfectant (Item #495565)
Zenatize Country Disinfectant (Item #495525)

52. During the Marketplace Inspection, the inspector collected receiving and distribution records for **Zenatize Disinfectant** (Item #495545) and **Zenatize Citrus Disinfectant** (Item #495565).

53. Receiving records collected during the Marketplace Inspection for calendar year 2018 identified Zenex International as the distributor of **Zenatize Disinfectant** (Item #495545) and **Zenatize Citrus Disinfectant** (Item #495565).

54. During the Inspection, the inspectors collected labeling, production, receiving and distribution records for **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), identified on each respective label as EPA Reg. No. 67603-4-74424.

55. **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), identified as EPA Reg. No. 67603-4-74424, are “pesticides” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) because they are intended for preventing, destroying, repelling, or mitigating certain pests.

56. Prior to February 26, 2019, **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), identified as EPA Reg. No. 67603-4-74424, were not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

57. During calendar year 2018, Respondent distributed or sold unregistered **Zenatize Disinfectant** (Item #495545) and **Zenatize Citrus Disinfectant** (Item #495565), identified by EPA Reg. No. 67603-4-74424, on at least 7 separate occasions.

58. Respondent’s distribution or sale of the unregistered pesticides, **Zenatize Disinfectant** (Item #495545) and **Zenatize Citrus Disinfectant** (Item #495565), identified by EPA Reg. No. 67603-4-74424, constitutes 7 unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

59. On or about February 26, 2019, EPA approved an EPA Form 8570-5 for the supplemental distribution of Spray Disinfectant, EPA Reg. No. 67603-4, registered to Sherwin-Williams Consumer Brands Group, for Zenex International. The supplemental distributor product was registered as **Zenatize Citrus Disinfectant** with alternate brand names of **Zenatize Disinfectant** and **Zenatize Country Disinfectant** and assigned EPA Reg. No. 67603-4-74424.

60. The labels for **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, that were collected during the Inspection, failed to contain a valid EPA Est.

No. as required by 40 C.F.R § 156.10(a)(1)(v).

61. The labels for **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, for distributions occurring during calendar year 2020, were misbranded, as they failed to contain a valid EPA Est. No.

62. During calendar year 2020, Respondent distributed or sold **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, on at least 247 separate occasions.

63. Respondent's distribution or sale of the misbranded pesticides, **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, constitutes 247 unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

64. The production records for **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, that were collected during the Inspection, failed to contain the EPA Reg. No. as required by 40 C.F.R. § 169.2.

65. During calendar year 2020, Respondent failed to maintain complete production records for **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, on at least 3 separate occasions.

66. Respondent's failure to maintain complete production records for **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, constitutes 3 unlawful

acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

ZenKill IV Multi-Purpose Insect Spray (Item #495785)

67. During the Inspection, the inspectors collected labeling, production, receiving and distribution records for **ZenKill IV Multi-Purpose Insect Spray (Item #495785)**, EPA Reg. No. 10900-86-74424.

68. **ZenKill IV Multi-Purpose Insect Spray (Item #495785)**, EPA Reg. No. 10900-86-74424, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) because it is intended for preventing, destroying, repelling, or mitigating certain pests.

69. The label for **ZenKill IV Multi-Purpose Insect Spray (Item #495785)**, EPA Reg. No. 10900-86-74424, that was collected during the Inspection, failed to contain a valid EPA Est. No as required by 40 C.F.R § 156.10(a)(1)(v).

70. The label for **ZenKill IV Multi-Purpose Insect Spray (Item #495785)**, EPA Reg. No. 10900-86-74424, for distributions occurring during calendar year 2020, was misbranded, as it failed to contain a valid EPA Est. No.

71. During calendar year 2020, Respondent distributed or sold **ZenKill IV Multi-Purpose Insect Spray (Item #495785)**, EPA Reg. No. 10900-86-74424, on at least 58 separate occasions.

72. Respondent’s distribution or sale of the misbranded pesticide, **ZenKill IV Multi-Purpose Insect Spray (Item #495785)**, EPA Reg. No. 10900-86-74424, constitutes 58 unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

73. The production records for **ZenKill IV Multi-Purpose Insect Spray (Item #495785)**, EPA Reg. No. 10900-86-74424, that were collected during the Inspection, failed to contain the EPA Reg. No. as required by 40 C.F.R. § 169.2.

74. During calendar year 2020, Respondent failed to maintain complete production records for **ZenKill IV Multi-Purpose Insect Spray** (Item #495785), EPA Reg. No. 10900-86-74424, on at least 1 occasion.

75. Respondent's failure to maintain complete production records for **ZenKill IV Multi-Purpose Insect Spray** (Item #495785), EPA Reg. No. 10900-86-74424, constitutes an unlawful act pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

ZenKill III Long Shot (Item #495975)

76. During the Inspection, the inspectors collected labeling, production, receiving and distribution records for **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424.

77. **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) because it is intended for preventing, destroying, repelling, or mitigating certain pests.

78. The label for **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, that was collected during the Inspection, failed to contain a valid EPA Est. No.

79. The label for **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, for distributions occurring during calendar year 2020, was misbranded, as it failed to contain a valid EPA Est. No as required by 40 C.F.R § 156.10(a)(1)(v).

80. During calendar year 2020, Respondent distributed or sold **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, on at least 95 separate occasions.

81. Respondent's distribution or sale of the misbranded pesticide, **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, constitutes 95 unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

82. The production records for **ZenKill III Long Shot** (Item #495975), EPA Reg. No.

67603-11-74424, that were collected during the Inspection, failed to contain the EPA Reg. No. as required by 40 C.F.R. § 169.2.

83. During calendar year 2020, Respondent failed to maintain complete production records for **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, on at least 1 occasion.

84. Respondent's failure to maintain complete production records for **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, constitutes an unlawful act pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Production in an Unregistered Establishment

85. Respondent's facility is an "establishment" as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3.

86. At all times relevant to this CAFO, Respondent's facility was not registered with EPA as required under Section 7 of FIFRA, 7 U.S.C. § 136c.

87. Respondent "produced" the pesticide products referenced in paragraphs 32-82, above, at its facility, during at least calendar year 2020, within the meaning of Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

88. Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a) by producing pesticides at an unregistered establishment.

89. Respondent's production of the pesticide products, identified in paragraphs 32-84, above, while not registered, constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Counts 1 – 5

90. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this

paragraph.

91. During calendar year 2018, Respondent distributed or sold the unregistered pesticide, **Zenatize Foam Disinfectant Cleaner** (Item #494955) identified as EPA Reg. No. 10900-57-74424, on at least 5 separate occasions.

92. Respondent's distribution or sale of the unregistered pesticide **Zenatize Foam Disinfectant Cleaner** (Item #494955) identified as EPA Reg. No. 10900-57-74424, on a least 5 separate occasions, constitutes 5 unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 6 – 147

93. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this paragraph.

94. During calendar year 2020, Respondent distributed or sold the misbranded pesticides **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), EPA Reg. No. 10900-57-74424, on at least 142 occasions.

95. Respondent's distribution or sale of the misbranded pesticides **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), EPA Reg. No. 10900-57-74424, on at least 142 occasions, constitutes 142 unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Counts 148 – 149

96. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this paragraph.

97. During calendar year 2020, Respondent failed to maintain complete production

records for **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), EPA Reg. No. 10900-57-74424, on at least 2 occasions.

98. Respondent's failure to maintain complete production records for **Zenatize Foam Disinfectant Cleaner** (Item #494955) and **Zenatize Foam Country Disinfectant Cleaner** (Item #494935), EPA Reg. No. 10900-57-74424, on at least 2 occasions, constitutes 2 unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Counts 150 – 156

99. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this paragraph.

100. During calendar year 2018, Respondent distributed or sold the unregistered pesticide, **Zenatize Disinfectant** (Item #495545) and **Zenatize Citrus Disinfectant** (Item #495565), identified as EPA Reg. No. 67603-4-74424, on at least 7 separate occasions.

101. Respondent's distribution or sale of the unregistered pesticides **Zenatize Disinfectant** (Item #495545) and **Zenatize Citrus Disinfectant** (Item #495565) identified as EPA Reg. No. 67603-4-74424, on a least 7 separate occasions, constitutes 7 unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 157 – 403

102. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this paragraph.

103. During calendar year 2020, Respondent distributed or sold the misbranded pesticides **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, on at least 247 occasions.

104. Respondent's distribution or sale of the misbranded pesticides **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, on at least 247 occasions, constitutes 247 unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Counts 404 – 406

105. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this paragraph.

106. During calendar year 2020, Respondent failed to maintain complete production records for **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, on at least 3 occasions.

107. Respondent's failure to maintain complete production records for **Zenatize Disinfectant** (Item #495545), **Zenatize Citrus Disinfectant** (Item #495565), and **Zenatize Country Disinfectant** (Item #495525), EPA Reg. No. 67603-4-74424, on at least 3 occasions, constitutes 3 unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Counts 407 – 464

108. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this paragraph.

109. During calendar year 2020, Respondent distributed or sold the misbranded pesticide **ZenKill IV Multi-Purpose Insect Spray** (Item #495785), EPA Reg. No. 10900-86-74424, on at least 58 occasions.

110. Respondent's distribution or sale of the misbranded pesticide **ZenKill IV Multi-Purpose Insect Spray** (Item #495785), EPA Reg. No. 10900-86-74424, on at least 58 occasions, constitutes 58 unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 465

111. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this paragraph.

112. During calendar year 2020, Respondent failed to maintain complete production records for **ZenKill IV Multi-Purpose Insect Spray** (Item #495785), EPA Reg. No. 10900-86-74424, on at least 1 occasion.

113. Respondent's failure to maintain complete production records for **ZenKill IV Multi-Purpose Insect Spray** (Item #495785), EPA Reg. No. 10900-86-74424, on at least 1 occasion, constitutes an unlawful act pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Counts 466 – 560

114. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this paragraph.

115. During calendar year 2020, Respondent distributed or sold the misbranded pesticide **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, on at least 95 occasions.

116. Respondent's distribution or sale of the misbranded pesticide **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, on at least 95 occasions, constitutes 95 unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 561

117. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this paragraph.

118. During calendar year 2020, Respondent failed to maintain complete production records for **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, on at least 1 occasion.

119. Respondent's failure to maintain complete production records for **ZenKill III Long Shot** (Item #495975), EPA Reg. No. 67603-11-74424, on at least 1 occasion, constitutes an unlawful act pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Count 562

120. Complainant incorporates paragraphs 1-89 of this CAFO, as if set forth in this paragraph.

121. During calendar year 2020, Respondent "produced" the pesticide products referenced in paragraphs 32-82, above, at its facility, which was not registered under FIFRA.

122. Respondent's production of pesticide products in an unregistered establishment, on at least 1 occasion, constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Civil Penalty and Other Relief

123. 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.

124. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), specifically including the Respondent’s size of business, ability to continue in business, and gravity of the violation, 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 \$235,886.

125. Respondents must pay a \$235,886 civil penalty in four installments with interest as follows:

<u>Installment</u>	<u>Due By</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest</u>
Payment #1	Within 90 days of effective date of CAFO	\$59,303.21	\$58,971.50	\$0
Payment #2	Within 180 days of effective date of CAFO	\$59,303.21	\$58,971.50	\$884.57
Payment #3	Within 270 days of effective date of CAFO	\$59,303.21	\$58,971.50	\$294.86
Payment #4	Within 360 days of effective date of CAFO.	\$59,303.21	\$58,971.50	\$147.53

126. Respondent must pay the installments by Automated Clearinghouse (ACH) also known as REX or remittance express ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
 ABA: 051036706
 Account Number: 310006, Environmental Protection Agency
 CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state “Zenex International” and the docket number of this CAFO. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required

fields.

127. Respondent must send a notice of each installment payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk
R5hearingclerk@epa.gov

Abigail Wesley
wesley.abigail@epa.gov

Puja Lakhani
lakhani.puja@epa.gov

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

129. 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.

130. 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

131. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail

at the following valid e-mail addresses for their respective representatives: Ms. Puja Lakhani at lakhani.puja@epa.gov (attorney for Complainant), and Mr. Clayton Smith at csmith@gmichemical.com (Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

133. 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.

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

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

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

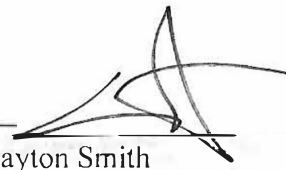
137. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

In the Matter of:
Zenex International
Docket No. FIFRA-05-2022-0019

7-13-22
Date


Clayton Smith
Chief Operating Officer
Zenex International

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS Digitally signed by
MICHAEL HARRIS
Date: 2022.07.27
10:22:37 -05'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

In the Matter of:
Zenex International
Docket No. FIFRA-05-2022-0019

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.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2022.08.01 12:57:47
-05'00'

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Zenex International
Docket Number: **FIFRA-05-2022-0019**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2022-0019**, which was filed on **August 2, 2022**, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Ms. Puja Lakhani
lakhani.puja@epa.gov

Copy by E-mail to
Respondent: Mr. Clayton Smith
csmith@gmichemical.com

Copy by E-mail to
Regional Judicial Officer: Ms. Ann Coyle
coyle.ann@epa.gov

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5