



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR - 4 2019

REPLY TO THE ATTENTION OF

LC-17J

VIA EMAIL

Mr. Francis X. Lyons
Partner
Schiff Hardin LLP
233 South Wacker Drive, Suite 7100
Chicago, Illinois 60606

flyons@schiffhardin.com

Re: Consent Agreement and Final Order - In the Matter of: North American Herb & Spice Co. Ltd. LLC FIFRA-05-2019-0006

Mr. Lyons:

Enclosed, please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above-referenced matter. This document was filed on April 4, 2019 with our Regional Hearing Clerk.

The civil penalty in the amount of \$67,101 is to be paid in the manner described in paragraphs 78-79. Please be certain that North American Herb & Spice Co. Ltd. LLC'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. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation to resolve this matter. Please do not hesitate to contact me if you have any questions regarding this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

Enclosure

cc: Kris Vezner, C-14J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2019-0006
)	
North American Herb & Spice Co. Ltd.)	Proceeding to Assess a Civil Penalty
LLC)	Under Section 14(a) of the Federal
Lake Forest, Illinois)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
Respondent.)	
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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 North American Herb & Spice Co. Ltd, LLC ("North American"), a limited liability corporation doing business in the State of Illinois.
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 of the Complaint.

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.

Statutory and Regulatory Background

9. Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii), states that it is unlawful for any person to refuse to allow any entry, inspection, copying of records, or sampling authorized by FIFRA.

10. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), provides in part that for the purposes of enforcing FIFRA, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to FIFRA, shall, upon request of any officer or employee of EPA or of any State or political subdivision, duly designated by the EPA Administrator, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that 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, 7 U.S.C. § 136a.

12. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA, 7 U.S.C. § 136e.

13. 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.”

14. 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.” Also see 40 C.F.R. §152.3.

15. 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.” Also see 40 C.F.R. §152.3.

16. 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. Also see 40 C.F.R. §152.5.

17. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “produce” in part as “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”

18. 40 C.F.R. § 167.3 defines the term “produce” in part as “to manufacture, prepare, compound, propagate, or process any pesticide . . . or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.”

19. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2) defines “labeling” as all labels and other written, printed or graphic matter accompanying the pesticide at any time or to which reference is made on the label or in literature accompanying the pesticide.

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

21. 40 C.F.R. § 152.15(a) states, in pertinent part, that no person may distribute or sell any pesticide product that is not registered under FIFRA. It further states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

22. Section 2(dd) of FIFRA 7 U.S.C. § 136(dd), defines an “establishment” as “any place where a pesticide or active ingredient used in producing a pesticide is produced for distribution or sale.”

23. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that no person may produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA unless the establishment in which it is produced is registered with EPA.

24. According to section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), any wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a penalty by U.S. EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended in 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. part 19, promulgated at 81 Fed. Reg. 43091 (July 1, 2016), increased the amount that can be assessed to \$19,446 for each offense that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.

Factual Allegations and Alleged Violations

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

26. At all times relevant to this CAFO, Respondent owned or operated a business at or

about 13900 West Polo Trail Drive, Lake Forest, Illinois, 60045 (“Respondent’s facility”).

27. At all times relevant to this CAFO, North American owned and/or operated at least one website: www.northamericanherbandspace.com (“Respondent’s website”).

28. On or about March 8, 2018, an EPA representative reviewed Respondent’s website for compliance with FIFRA.

29. On or about April 12, 2018, an EPA inspector employed by the Illinois Department of Agriculture (IDA) and authorized to conduct inspections under FIFRA attempted to conduct an inspection at Respondent’s facility.

30. On or about May 3, 2018, EPA inspectors authorized to conduct inspections under FIFRA attempted to conduct an inspection at Respondent’s facility.

31. On or about June 14, 2018, Respondent provided, via electronic mail, redacted distribution records for Germ-a-CLENZ, OregaSpray, and Herbal Bug-X for the time period between April 1, 2017 and April 27, 2018.

32. On or about June 14, 2018, Respondent provided, via electronic mail, a bin label and shipping record statement indicating that the bin labels collected during the May 3, 2018 inspection were a true and accurate representation of the labeling on containers of Germ-a-CLENZ, OregaSpray, and Herbal Bug-X released for shipment between April 1, 2017 and April 27, 2018

Germ-a-CLENZ

33. During the May 3, 2018 inspection, the EPA inspector collected labeling from Respondent for **Germ-a-CLENZ**.

34. The **Germ-a-CLENZ** labeling stated, among other things:

a. *“the natural, nontoxic way to kill germs.”*

- b. "naturally kills 99.9% of germs as well as mites, mold & mildew."
- c. "works as a bug repellent."
- d. "Use to decontaminate any toxin."
- e. "All-purpose antiseptic spray"
- f. "Eliminates mold and mildew"
- g. "www.oreganol.com"

35. On or about March 8, 2018, an EPA representative viewed www.oreganol.com, which automatically directed to Respondent's website. On or about March 8, 2018, the description of **Germ-a-CLENZ** at Respondent's website stated, among other things:

"Germ-a-CLENZ – 4 FL. OZ.

Germ-a CLENZ is the natural, non-toxic way to kill germs. It can even be sprayed on food. Ideal for cleansing the air while neutralizing toxic chemicals and odors. Germ-a-CLENZ naturally kills germs as well as mites, mold, and mildew. It safely eliminates mold from the air. Use to clean and protect fruits and vegetables. Also ideal for pets."

36. At all times relevant to the CAFO, **Germ-a-CLENZ** was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

37. At all times relevant to the CAFO, **Germ-a-CLENZ** was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

38. On or after April 13, 2018, Respondent distributed or sold **Germ-a-CLENZ** on at least seven separate occasions.

OregaSpray

39. During the May 3, 2018 inspection, the EPA inspector collected labeling from Respondent for **OregaSpray**.

40. The **OregaSpray** labeling stated, among other things:

- a. "public disinfectant"
- b. "Cleans & purifies the air"
- c. "Kills 99.9% of all germs"
- d. "www.oreganol.com"

41. On or about March 8, 2018, an EPA representative viewed www.oreganol.com, which automatically directed to Respondent's website. On or about March 8, 2018, the description of **OregaSpray** at Respondent's website stated, among other things:

"OregaSpray

OregaSpray is the only completely natural, edible, multipurpose spray. Made with completely natural [ingredients], making it the ideal . . . • insect repellent . . . • public disinfectant . . . [a]lways take OregaSpray with you."

42. At all times relevant to the CAFO, **OregaSpray** was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

43. At all times relevant to the CAFO, **OregaSpray** was not registered under section 3 of FIFRA, 7 U.S.C. § 136(a).

44. On or after April 13, 2018, Respondent distributed or sold **OregaSpray** on at least 11 separate occasions.

Herbal Bug-X

45. During the May 3, 2018 inspection, the EPA inspector collected labeling from Respondent for **Herbal Bug-X**.

46. The **Herbal Bug-X** labeling stated, among other things:

- a. "repels all biting insects"
- b. "a natural insecticide."
- c. "Great for repelling ants."

- d. "Completely non-toxic."
- e. "REPELS MOSQUITOES, GNATS, BLACKFLIES, ANTS"
- f. "www.oreganol.com"

47. On or about March 8, 2018, an EPA representative viewed www.oreganol.com, which automatically directed to Respondent's website. On or about March 8, 2018, the description of **Herbal Bug-X** at Respondent's website stated, among other things:

"Herbal Bug-X

Herbal Bug-X natural insect repellent repels all biting insects more effectively than any other natural insect repellent on the market. It is completely safe for all ages and also pets. Safe for babies' skin and also safe to breathe and swallow. Herbal Bug-X is also a natural insecticide. Great for repelling ants and other biting insects. Herbal Bug-X natural insect repellent is made from the finest spice oils on earth [sic] its ingredients include: wild oregano oil, wild bay leaf oil, wild lavender oil, nutmeg oil, and oil of basil.

- *Repels: mosquitos – gnats – black flies – ants -ticks – and many more*
- *Completely free of harmful chemicals including DEET*
- *Safe for babies, small children, and pets*
- *So safe you can eat it*
- *Completely non-toxic*
- *GMO-FREE"*

48. At all times relevant to the CAFO, **Herbal Bug-X** was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

49. At all times relevant to the CAFO, **Herbal Bug-X** was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

50. On or after April 13, 2018, Respondent distributed or sold **Herbal Bug-X** on at least four separate occasions.

Count 1

51. The preceding paragraphs are incorporated by reference.

52. During the May 3, 2018 inspection, one or more EPA inspectors requested to have

access to and to copy records showing the delivery, movement, or holding of **Germ-a-CLENZ**, **OregaSpray**, and **Herbal Bug-X** (requested records).

53. During the May 3, 2018 inspection, Respondent refused to allow EPA inspectors to have access to or to copy the requested records.

54. During the May 3, 2018 inspection, Respondent signed a receipt for samples stating that Respondent would provide the requested records no later than May 10, 2018.

55. Respondent did not provide the requested records on or before May 10, 2018.

56. Respondent's May 3, 2018, refusal to allow EPA inspectors to have access to and to copy the requested records, constitutes an unlawful act pursuant to Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii).

57. Respondent's violation of Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii), set forth in this Count, 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

58. The preceding paragraphs are incorporated by reference.

59. At all times relevant to the CAFO, Respondent manufactured, prepared, compounded, propagated, or processed **Germ-a-CLENZ**, **OregaSpray** and **Herbal Bug-X** at Respondent's facility.

60. At all times relevant to the CAFO, Respondent packaged, repackaged, labeled, relabeled, or otherwise changed the container of **Germ-a-CLENZ**, **OregaSpray** and **Herbal Bug-X** at Respondent's facility.

61. At all times relevant to this CAFO, Respondent produced **Germ-a-CLENZ**,

OregaSpray and **Herbal Bug-X** at Respondent's facility, as production is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.

62. At all times relevant to this CAFO, Respondent's production of pesticide products in a facility that was not registered with EPA as a pesticide producing establishment constitutes an unlawful act pursuant to 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

63. Respondent's violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), set forth in this Count, 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).

Counts 3-9

64. The preceding paragraphs are incorporated by reference.

65. Between April 13-27, 2018, Respondent distributed or sold the unregistered pesticide, **Germ-a-CLENZ**, on at least seven separate occasions.

66. Each of Respondent's distributions or sales set forth at paragraph 65, above, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

67. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), set forth in this Count, subject 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).

Counts 10-20

68. The preceding paragraphs are incorporated by reference.

69. Between April 13-27, 2018, Respondent distributed or sold the unregistered pesticide, **OregaSpray**, on at least 11 separate occasions.

70. Each of Respondent's distributions or sales set forth in paragraph 69, above, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

71. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), set forth in this Count, subject 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).

Counts 21- 24
Distribution or Sale of Unregistered Pesticide Herbal Bug-X

72. The preceding paragraphs are incorporated by reference.

73. Between April 13-27, 2018, Respondent distributed or sold the unregistered pesticide, **Herbal Bug-X**, on at least four separate occasions.

74. Each of Respondent's distributions or sales set forth in paragraph 73, above, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

75. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), set forth in this Count, subject 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

76. 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.

77. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA, specifically including the Respondent's size of business and ability to continue in business, 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 \$67,101.

78. Within 30 days after the effective date of this CAFO, Respondent must pay a \$67,101 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

In the comment or description field of the electronic funds transfer, include "North American Herb & Spice Co. Ltd, LLC" and the docket number of this CAFO.

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

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

Abigail Wesley (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Kris Vezner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

81. 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.

82. 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

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

84. This CAFO does not affect the rights of EPA or the United States to pursue criminal sanctions or any violations of law which occur after the effective date of this CAFO.

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

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

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

88. 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.

89. 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: vezner.kris@epa.gov (for Complainant), and flyons@schiffhardin.com (for Respondent). The parties waive their right to service by the

methods specified in 40 C.F.R. § 22.6.

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

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

In the Matter of: North American Herb and Spice Co. Ltd. LLC
Lake Forest, Illinois
Docket No. FIFRA-05-2019-0006

North American Herb and Spice Co. Ltd. LLC

3/5/19
Date

Judy Gray
Judy Gray
Chief Executive Officer

United States Environmental Protection Agency, Complainant

3/29/2019
Date

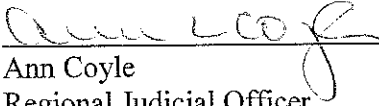
Michael D. Harris #2 1.11
Tinka G. Hyde
Director
Land and Chemicals Division

In the Matter of: North American Herb and Spice Co. Ltd. LLC
Lake Forest, Illinois
Docket No. FIFRA-05-2019-0006

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.

April 3, 2019
Date


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

Consent Agreement and Final Order

In the Matter of: North American Herb & Spice Co. Ltd. LLC FIFRA-05-2019-0006

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Consent Agreement and

Final Order, Docket Number: FIFRA-05-2019-0006, which was filed on

April 4, 2019, in the following manner to the following addressees:

Copy by E-mail to
Respondent:

Mr. Francis X. Lyons
flyons@schiffhardin.com

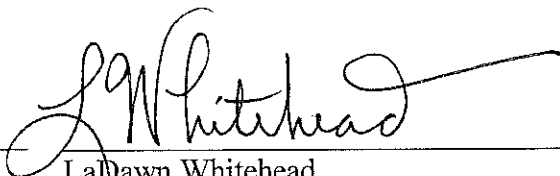
Copy by E-mail to
Attorney for Complainant:

Mr. Kris Vezner
vezner.kris@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ms. Ann L. Coyle
coyle.ann@epa.gov

Dated: April 4, 2019



Lal Dawn Whitehead
Regional Hearing Clerk
United States Environmental Protection Agency
Region 5