



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 15 2018

REPLY TO THE ATTENTION OF:

LC-17J

VIA EMAIL

Mr. Daniel J. Patton
President
CarbonKlean, LLC
24 Village Point Drive
Powell, Ohio 43605

djpatton@carbonklean.com

Consent Agreement and Final Order In the Matter of CarbonKlean, LLC, Docket
Number **FIFRA-05-2018-0041**

Mr. Patton:

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 15, 2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$47,992 is to be paid in the manner described in paragraphs 33 and 34. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

CarbonKlean, LLC
Powell, Ohio

Respondent.



Docket No. FIFRA-05-2018-0041

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. Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is CarbonKlean, LLC (CarbonKlean), a corporation doing business in the State of Ohio.
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. §§ 136-136y.

Statutory and Regulatory Background

10. 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.

11. 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).

12. 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).

13. A “pest” is, among other things, any insect rodent, nematode, fungus or weed. 7 U.S.C. § 136(t).

14. 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. 40 C.F.R. § 152.15(a)(1).

15. A “person” is any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. 7 U.S.C. § 136(s).

16. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$18,750 for each offense that occurred after November 2, 2015 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

18. Respondent owned or operated a place of business located at 24 Village Point Drive, Powell, Ohio 43605 at all times relevant to this Complaint.

19. On or about April 25, 2017, an inspector employed by EPA and authorized to conduct inspections under FIFRA examined Respondent’s website at www.carbonklean.com.

20. On or about April 25, 2017, the EPA inspector observed the following claims for “SmartKlear” and “SmartKlear Electroplated” (SmartKlear) on Respondent’s website:

- a. “The best way to clean fingerprints and kill bacteria on iPhones, Android Phones and other handheld smart screens!”
- b. “Not only does our technology clean your screens better than anything else, it also contains an all-natural antibacterial which kills bacteria while the Carbon cleans.”

21. On or about April 25, 2017, the EPA inspector observed the following claims for “ScreenKlean” and “ScreenKlean Electroplated” (ScreenKlean) on Respondent’s website:

- a. “The best way to clean fingerprints and kill bacteria on iPads, tablets, e-books and other larger touch screens!”

- b. “Not only does our technology clean your screens better than anything else, it also contains an all-natural antibacterial which kills bacteria while the Carbon cleans.”

22. On or about April 25, 2017, the EPA inspector observed the following claims for LapTop Pro on Respondent’s website: “LapTop Pro is the all-in-one screen and keyboard cleaning and antibacterial system your computer has been waiting for!”

23. On or about April 25, 2017, Respondent’s website offered SmartKlear, ScreenKlean, and LapTop Pro for distribution or sale.

24. On or about May 11 and 16, 2017, an inspector employed by the Ohio Department of Agriculture (ODA) and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business at 24 Village Point Drive, Powell, Ohio 43605.

25. On or about May 11 and 16, 2017, the ODA inspector documented Respondent’s holding for distribution or sale of SmartKlear, ScreenKlean, SmartKlear Replacement Pads, and ScreenKlean Replacement Pads.

26. The labels of SmartKlear, ScreenKlean, LapTop Pro, SmartKlear Replacement Pads, and ScreenKlean Replacement Pads, observed by ODA and documented in photographs collected on or about May 11 and 16, 2017, contained the following claims or statements:

- a. “Kills Germs”
- b. “EPA Reg. No. 47371-37-56782”
- c. “EPA Est. No. 40873-GA-01”

27. On or about April 25, 2017, Respondent distributed or sold SmartKlear, ScreenKlean, and LapTop Pro.

28. On or about May 16, 2017, Respondent distributed or sold SmartKlear, ScreenKleen, LapTop Pro, SmartKlear Replacement Pads, and ScreenKleen Replacement Pads.

29. SmartKlear and SmartKlear Electroplated, ScreenKlean and ScreenKlean Electroplated, LapTop Pro, SmartKlear Replacement Pads, and ScreenKlean Replacement Pads are “pesticides” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

31. SmartKlear and SmartKlear Electroplated, ScreenKlean and ScreenKlean Electroplated, LapTop Pro, SmartKlear Replacement Pads, and ScreenKlean Replacement Pads SmartKlear were not registered as pesticides with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on April 25, 2017 or May 16, 2017.

32. Respondent’s distribution or sale of the unregistered pesticides SmartKlear and SmartKlear Electroplated, ScreenKlean and ScreenKlean Electroplated, LapTop Pro, SmartKlear Replacement Pads, and ScreenKlean Replacement Pads constitutes seven unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

33. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$47,992. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$47,922 civil penalty for the FIFRA violations 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
Post Office Box 979077
St. Louis, Missouri 63197-9000

35. Respondent must send a notice of 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 (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

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

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

37. If Respondent does not pay timely the civil penalty, 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.

38. 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

39. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mcauliffe.mary@epa.gov (for Complainant), and djpatton@carbonklean.com (for Respondent).

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

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

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

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

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

45. 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.

46. Each party agrees to bear its own costs and attorneys fees, in this action.

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

CarbonKlean, LLC, Respondent

8/2/18

Date

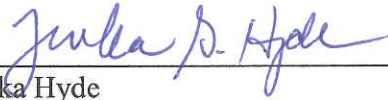


Daniel J. Patton
President
CarbonKlean, LLC

United States Environmental Protection Agency, Complainant

8-13-18

Date



Tinka Hyde
Director
Land and Chemicals Division

In the Matter of:
CarbonKlean, LLC
Docket No. FIFRA-05-2018-0041

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.

8/14/18
Date

Debra K. Smith
for Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: CarbonKlean, LLC
Docket Number: **FIFRA-05-2018-0041**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, docket number FIFRA-05-2018-0041, which was filed on August 15, 2018, in the following manner to the following addressees:

Copy by E-mail to Attorney for Complainant: Ms. Mary McAuliffe
mcauliffe.mary@epa.gov

Copy by E-mail to Respondent: Mr. Daniel J. Patton
djpatton@carbonklean.com

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

Dated: August 15, 2018



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