



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

April 14, 2022

VIA EMAIL ONLY

Mr. Jared Peterson
Shareholder, Fafinski Mark & Johnson
700 North Minnesota Street, Suite B
New Ulm, Minnesota 56073
jared.peterson@fmjlaw.com

Consent Agreement and Final Order
In the Matter of Ag Partners Cooperative
Docket Number: FIFRA-05-2022-0006

Mr. Peterson:

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 April 14, 2022 with the Regional Hearing Clerk.

The civil penalty in the amount of \$46,960 is to be paid in the manner described in paragraphs 84-89. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

ANGELA Digitally signed by
ANGELA BOUCHE
BOUCHE Date: 2022.04.01
12:35:24 -05'00'

Angela Bouche
Pesticides and Toxics Compliance Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2022-0006
)	
Ag Partners Cooperative)	Proceeding to Assess a Civil Penalty
Morristown, Minnesota,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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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 Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Ag Partners Cooperative, a cooperative doing business in the State of Minnesota.

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. § 136j(a)(2)(B)(i), and 7 U.S.C. § 136j(a)(1)(E), and the regulations at 40 C.F.R. § 165.70(j)(2)(i) and 40 C.F.R. § 169.2.

Statutory and Regulatory Background

10. 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.

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

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

13. 40 C.F.R. § 165.70(e)(10) requires refillers to maintain records in accordance with 40 C.F.R. § 165.70(j).

14. 40 C.F.R. § 165.70(j) states, in part, that refillers who are not registrants must maintain all of the records listed in this section in addition to the applicable records identified in

parts 167 and 169 of this chapter.

15. 40 C.F.R. § 169.2(a) states 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 pesticides, devices, and pesticide active ingredients produced for export, shall maintain records showing, among other things, an EPA Registration Number.

16. 40 C.F.R. § 165.70(j)(2)(i) states that each time refillers repackage a pesticide product into a refillable container and distribute and sell the product, the record of the EPA registration number of the pesticide product distributed or sold in the refillable container must be generated and maintained for at least three years after the date of repackaging.

17. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).

18. 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).

19. An “establishment” means “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.” 7 U.S.C. § 136(dd).

20. The term “refiller” means “a person who engages in the activity of repackaging pesticide product into refillable containers. This could include a registrant or a person operating under contract to a registrant.” 40 C.F.R. § 165.3

21. The term “repackage” means “to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the

product's EPA registration number, for sale or distribution.” 40 C.F.R. § 165.3

22. 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).

23. 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 U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C § 136w(c)(1). 7 U.S.C. § 136(t).

24. The term “pesticide product” means “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.” 40 C.F.R. § 152.3

25. The term “produce” means “to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.” 40 C.F.R. § 165.3

26. The term “producer” means “any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).” 40 C.F.R. § 165.3

27. Section 14(a)(1), 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

28. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$20,528 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

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

30. At all times relevant to this CAFO, Respondent owned or operated an establishment at 6676 250th Street West, Morristown, Minnesota (Facility).

31. At all times relevant to this CAFO, Respondent’s Facility was a place where a pesticide or device or active ingredient used in producing a pesticide was produced, or held, for distribution or sale.

32. Respondent’s Facility is an “establishment” as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

33. At all times relevant to this CAFO, Respondent’s Facility was registered with EPA and was assigned EPA Establishment Number (EPA Est. No.) 47347-MN-4.

34. On or about December 9, 2019, an inspector employed by the Minnesota Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s facility (Inspection).

35. During the Inspection, the inspector collected copies of repackaging records, which also served as production records, for Roundup PowerMax, EPA Reg. No. 524-549, Touchdown Total, EPA Reg. No. 100-1169, Durango, EPA Reg. No. 62719-324, and SureStart II, EPA Reg. No. 62719-679.

Roundup PowerMax, EPA Reg. No. 524-549

36. Roundup PowerMax, EPA Reg. No. 524-549, is a “pesticide” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

37. At all times relevant to this CAFO, Respondent was a “refiller” of Roundup

PowerMax, EPA Reg. No. 524-549, as defined at 40 C.F.R. § 165.3.

38. At all times relevant to this CAFO, Respondent was a “producer” of Roundup PowerMax, EPA Reg. No. 524-549, as defined at 40 C.F.R. § 165.3.

39. On or about May 29, 2018; May 30, 2018; May 28, 2019; May 31, 2019; June 5, 2019; June 12, 2019; June 13, 2019; June 15, 2019; June 26, 2019; and July 17, 2019; Respondent distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment, or received and (having so received) delivered or offered to deliver Roundup PowerMax, EPA Reg. No. 524-549.

40. Respondent repackaged Roundup PowerMax, EPA Reg. No. 524-549, into refillable containers for sale or distribution as referenced in paragraph 39, above.

41. Respondent “distributed or sold” Roundup PowerMax, EPA Reg. No. 524-549, as defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

42. At all times relevant to this CAFO, Respondent was not the registrant of Roundup PowerMax, EPA Reg. No. 524-549.

43. Respondent failed to maintain a record of the EPA registration number of Roundup PowerMax, EPA Reg. No. 524-549, each time it distributed or sold the product, as referenced in paragraph 40, above, in accordance with 40 C.F.R. §§ 165.70(e)(10) and 165.70(j)(2)(i). In accordance with 40 C.F.R. § 169.2(a), Respondent failed to maintain records showing the EPA Registration Number.

44. Respondent’s failure to maintain records of the EPA Registration Number for Roundup PowerMax, EPA Reg. No. 524-549, as described in paragraphs 42 and 43, above, constitutes at least ten unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

45. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Touchdown Total, EPA Reg. No. 100-1169

46. Touchdown Total, EPA Reg. No. 100-1169, is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

47. At all times relevant to this CAFO, Respondent was a “refiller” of Touchdown Total, EPA Reg. No. 100-1169, as defined at 40 C.F.R. § 165.3.

48. At all times relevant to this CAFO, Respondent was a “producer” of Touchdown Total, EPA Reg. No. 100-1169, as defined at 40 C.F.R. § 165.3.

49. On or about May 26, 2017, and June 31, 2017, Respondent distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment, or received and (having so received) delivered or offered to deliver Touchdown Total, EPA Reg. No. 100-1169.

50. Respondent repackaged Touchdown Total, EPA Reg. No. 100-1169, into refillable containers for sale or distribution as referenced in paragraph 49, above.

51. Respondent “distributed or sold” Touchdown Total, EPA Reg. No. 100-1169, as defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

52. At all times relevant to this CAFO, Respondent was not the registrant of Touchdown Total, EPA Reg. No. 100-1169.

53. Respondent failed to maintain a record of the EPA registration number of Touchdown Total, EPA Reg. No. 100-1169, each time it distributed or sold the product, as referenced in paragraph 50, above, in accordance with 40 C.F.R. §§ 165.70(e)(10) and 165.70(j)(2)(i). In accordance with 40 C.F.R. § 169.2(a), Respondent failed to maintain records

showing the EPA Registration Number.

54. Respondent's failure to maintain records of the EPA registration number Touchdown Total, EPA Reg. No. 100-1169, as described in paragraphs 52 and 53, above, constitutes at least two unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

55. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Durango, EPA Reg. No. 62719-324

56. Durango, EPA Reg. No. 62719-324, is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

57. At all times relevant to this CAFO, Respondent was a "refiller" of Durango, EPA Reg. No. 62719-324, as defined at 40 C.F.R. § 165.3.

58. At all times relevant to this CAFO, Respondent was a "producer" of Durango, EPA Reg. No. 62719-324, as defined at 40 C.F.R. § 165.3.

59. On or about June 7, 2017 and June 19, 2017, Respondent distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment, or received and (having so received) delivered or offered to deliver Durango, EPA Reg. No. 62719-324.

60. Respondent repackaged Durango, EPA Reg. No. 62719-324, into refillable containers for sale or distribution as referenced in paragraph 59, above.

61. Respondent "distributed or sold" Durango, EPA Reg. No. 62719-324, as defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

62. At all times relevant to this CAFO, Respondent was not the registrant of Durango,

EPA Reg. No. 62719-324.

63. Respondent failed to maintain a record of the EPA registration number of Durango, EPA Reg. No. 62719-324, each time it distributed or sold the product, as referenced in paragraph 60, above, in accordance with 40 C.F.R. §§165.70(e)(10) and 165.70(j)(2)(i). In accordance with 40 C.F.R. § 169.2(a), Respondent failed to maintain records showing the EPA Registration Number.

64. Respondent's failure to maintain records of the EPA registration number Durango, EPA Reg. No. 62719-324, as described in paragraphs 62 and 63 above, constitutes at least two unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

65. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

SureStart II, EPA Reg. No. 62719-679

66. SureStart II, EPA Reg. No. 62719-679, is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

67. At all times relevant to this CAFO, Respondent was a "refiller" of SureStart II, EPA Reg. No. 62719-679, as defined at 40 C.F.R. § 165.3.

68. At all times relevant to this CAFO, Respondent was a "producer" of SureStart II, EPA Reg. No. 62719-679, as defined at 40 C.F.R. § 165.3.

69. On or about April 22, 2019, and May 9, 2019, Respondent distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment, or received and (having so received) delivered or offered to deliver SureStart II, EPA Reg. No. 62719-679.

70. Respondent repackaged SureStart II, EPA Reg. No. 62719-679, into refillable

containers for sale or distribution as referenced in paragraph 69, above.

71. Respondent “distributed or sold” SureStart II, EPA Reg. No. 62719-679, as defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

72. At all times relevant to this CAFO, Respondent was not the registrant of SureStart II, EPA Reg. No. 62719-679.

73. Respondent failed to maintain a record of the EPA registration number of SureStart II, EPA Reg. No. 62719-679, each time it distributed or sold the product, as referenced in paragraph 70, above, in accordance with 40 C.F.R. §§ 165.70(e)(10) and 165.70(j)(2)(i). In accordance with 40 C.F.R. § 169.2(a), Respondent failed to maintain records showing the EPA Registration Number.

74. Respondent’s failure to maintain records of the EPA registration number SureStart II, EPA Reg. No. 62719-679, as described in paragraphs 72 and 73, above, constitutes at least two unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

75. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Container M-124

76. During calendar year 2019, Respondent repackaged Roundup PowerMax, EPA Reg. No. 524-549, into a refillable container identified as container M-124 at its Facility, EPA Est. No. 47347-MN-4.

77. During the Inspection, the inspector photographed container M-124.

78. Photographs taken during the inspection of container M-124 showed EPA Est. Nos. 47347-MN-4 and 47347-MN-2 on the container.

79. Respondent did not repackage Roundup PowerMax, EPA Reg. No. 524-549, into

container M-124 at EPA Est. No. 47347-MN-2.

80. On or about June 14, 2019, Respondent distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment, or received and (having so received) delivered or offered to deliver Roundup PowerMax, EPA Reg. No. 524-549, in container M-124 with EPA Est. Nos. 47347-MN-4 and 47347-MN-2 on the container.

81. Roundup PowerMax, EPA Reg. No. 524-549, as referenced in paragraph 80, above, was misbranded as that term is defined by Section 2(q)(1)(A) of FIFRA.

82. Respondent's distribution or sale of misbranded Roundup PowerMax, EPA Reg. No. 524-549 on June 14, 2019, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

83. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

84. 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 \$46,960. 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 and Enforcement Response Policy for FIFRA Pesticide Container/Containment Regulations (Appendix H) dated March 6, 2012.

85. Within 30 days after the effective date of this CAFO, Respondent must pay a \$46,960 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

86. 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

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

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

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

88. 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.

89. 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

90. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: carnovsky.tamara@epa.gov (for Complainant), and jared.peterson@fmjlaw.com (for Respondent).

91. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

92. 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.

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

94. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy and Enforcement Response Policy for FIFRA Pesticide Container/ Containment Regulations.

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

96. 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.

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

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

Ag Partners Cooperative, Respondent

4/1/2022
Date

W. Ahlbrecht
William Ahlbrecht, Chief Executive Officer
Ag Partners Cooperative

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.04.06
11:51:52 -05'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

In the Matter of:
Ag Partners Cooperative
Docket No. FIFRA-05-2022-0006

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.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2022.04.14
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Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Ag Partners Cooperative
Docket Number: FIFRA-05-2022-0006

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number FIFRA-05-2022-0006, which was filed on April 14, 2022, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Ms. Tamara Carnovsky
carnovsky.tamara@epa.gov

Copy by E-mail to
Respondent: Mr. Jared Peterson
Fafinski Mark & Johnson
700 North Minnesota Street, Suite B
New Ulm, Minnesota 56073
jared.peterson@fmjlaw.com

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

Dated: _____
ISIDRA
MARTINEZ

Digitally signed by ISIDRA
MARTINEZ
Date: 2022.04.14
17:09:10 -05'00'

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