

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC  
FILED-14MAR2019PM5:18

Sapphire Scientific, Inc. : U.S. EPA Docket Number  
901 N. Newkirk Street : FIFRA-03-2019-0039  
Baltimore, MD 21205 :  
RESPONDENT. : Proceeding Under Section 14 of the  
Federal Insecticide, Fungicide and  
Rodenticide Act, as amended, 7 U.S.C.  
§ 136f

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Sapphire Scientific, Inc. ("Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), Sections 22.13(b) and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice")*, 40 C.F.R §§ 22.13(b), 22.18(b). This CA and the accompanying Final Order (collectively "CAFO") resolves Complainant's civil penalty claims against the Respondent arising from the violations of FIFRA alleged within.

This CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3).

JURISDICTION

1. U.S. Environmental Protection Agency, Region III has jurisdiction over the above-captioned matter pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l(a).

GENERAL PROVISIONS

2. For purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this CAFO.
3. For purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth herein, except as provided in Paragraph 2, above.

4. Respondent agrees not to contest EPA' s jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
5. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
7. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
8. Respondent shall bear its own costs and attorney's fees.

#### STAUTORY AND REGULATORY BACKGROUND

9. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to sell or distribute to any person any pesticide that is misbranded.
10. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is "misbranded" if any word, statement of other information required by or under the authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness...and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
11. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a "person" as "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not."
12. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines "to 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."
13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a "pesticide" to include "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest" and "any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant."
14. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a "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 (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section [25(c)(1) of FIFRA]." *See also* 40 C.F.R. § 152.5.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. Respondent is a corporation established under the laws of the State of Maryland.
16. Respondent is, and at all times referred to herein was, a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
17. Respondent 's corporate headquarters is located at 2604 Liberator Prescott, AZ 86301.
18. At all times relevant to the violations alleged herein, Respondent "sold" or "distributed" the pesticides: Milgo Plus (70385-6); Microban Germicidal Cleaner Concentrate Mint (70385-6); Microban Germicidal Cleaner Concentrate Lemon (70385-6); Microban Disinfectant Spray Plus Fragrance Free (70385-5); Microban X-590 (70385-3); and Microban Disinfectant Spray Plus (70385-6); as these terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136.
19. On, January 13, 2018 EPA conducted an inspection and obtained evidence of Respondent's labels at 901 N Newkirk Street, Baltimore, MD 21205.
20. A representative of the EPA reviewed the labels used on containers of pesticides sold by Sapphire Scientific.

## COUNTS

21. The allegations contained in Paragraphs 1 through 20 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
28. Respondent's products Milgo Plus (70385-6); Microban Germicidal Cleaner Concentrate Mint (70385-6); Microban Germicidal Cleaner Concentrate Lemon (70385-6); Microban Disinfectant Spray Plus Fragrance Free (70385-5); Microban X-590 (70385-3); Microban Disinfectant Spray Plus (70385-6,) are "pesticides" as this term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
29. On or after the January 2018 inspection, EPA representatives determined that the producing establishment number was not prominently placed on Respondent's product label for Milgo Plus (70385-6).
30. On or after the January 2018 inspection, EPA representatives determined that the producing establishment number was not prominently placed on Respondent's product label for Microban Germicidal Cleaner Concentrate Mint (70385-6).
31. On or after the January 2018 inspection, EPA representatives determined that the producing establishment number was not prominently placed on Respondent's product label for Microban Germicidal Cleaner Concentrate Lemon (70385-6).

32. On or after the January 2018 inspection, EPA representatives determined that the producing establishment number was not prominently placed on Respondent's product label for Microban Disinfectant Spray Plus Fragrance Free (70385-5).
33. On or after the January 2018 inspection, EPA representatives determined that the producing establishment number was not prominently placed on Respondent's product label for Microban X-590 (70385-3).
34. On or after the January 2018 inspection, EPA representatives determined that the producing establishment number was not prominently placed on Respondent's product label for Microban Disinfectant Spray Plus (70385-6).
35. Respondent's sales of the misbranded pesticides described in paragraphs 28 through 34 constitute 6 violations of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA 7 U.S.C. § 136j(a)(1)(E) and 136j(a)(2)(S).

#### CIVIL PENALTY

36. In settlement of Complainant's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of Sixteen Thousand Four Hundred Dollars (\$16,400.00).
37. The civil penalty is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty within 30 calendar days of the date on which this CAFO is mailed to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11 (a)(1).
38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
39. In accordance with 40 C.F.R. § 13.11(a); interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
40. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11 (b). Pursuant to Appendix 2 of EPA's Resources Management Directives-Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first 30-day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid.

41. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than 90 calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
42. The aforesaid settlement amount was based upon Complainant's consideration of the statutory factors set forth at Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4): the appropriateness of such penalty to 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. The penalty is also consistent with 40 C.F.R. Part 19 and EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, dated December 2009 ("ERP").
43. Respondents shall pay the EPA Civil Penalty using any method, or combination of methods, provided on the websites <https://www.epa.gov/financial/makepayment> and <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying payment with "Docket No.: FIFRA-03-2019-0039."
44. Within 24 hours of payment of the EPA Civil Penalty, Respondent shall send proof of payment to:

Regional Hearing Clerk (3RC00)  
 U.S. EPA, Region III  
 1650 Arch Street  
 Philadelphia, PA 19103-2029  
[R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov)

and

Alison M. Debes (3RC60)  
 Sr. Assistant Regional Counsel  
 U.S. EPA, Region III  
 1650 Arch Street  
 Philadelphia, PA 19103-2029  
[Debes.Alison@epa.gov](mailto:Debes.Alison@epa.gov)

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with "Docket No.: FIFRA-03-2019-0039."

#### FULL AND FINAL SATISFACTION

45. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for the violations alleged herein.

#### RESERVATION OF RIGHTS

46. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under FIFRA,

the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

OTHER APPLICABLE LAWS

47. Nothing in this CAFO relieves Respondent of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

AUTHORITY TO BIND THE PARTIES

48. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order

ENTIRE AGREEMENT

49. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

EFFECTIVE DATE

50. This CAFO shall become effective upon filing with the Regional Hearing Clerk.


**For Respondent:**

Sapphire Scientific, Inc.

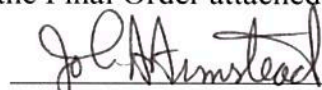
  
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William Bruders  
Chief Executive Officer

**For Complainant:**

**U.S. Environmental Protection Agency**

  
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Alison M. Debes  
Sr. Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

  
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John A. Armstead, Director  
Land and Chemicals Division,  
U.S. EPA, Region III

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FINAL ORDER

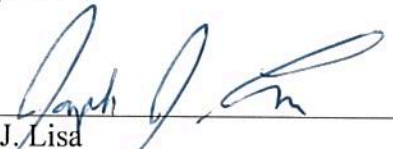
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Sapphire Scientific, Inc., ("Respondent") have executed a document entitled "Consent Agreement" which I ratify as a Consent Agreement in accordance with Sections 22.13(b), 22.18(b)(2) 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" ), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3).

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to in the Consent Agreement is based on the consideration of, *inter alia*, the statutory factors set forth in Section 14(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a)(4), and EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, dated December 2009.

NOW, THEREFORE, PURSUANT TO Section 14(a) of FIFRA, 7 U.S.C. § 136l (a), and Section 22.18(b)(3) of the Consolidated Rules, IT IS HEREBY ORDERED that Respondent pay a civil penalty in the amount of Sixteen Thousand Four Hundred Dollars (\$16,400.00), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: March 14, 2019

By:   
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III



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CERTIFICATE OF SERVICE

I certify that today the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same the following person(s), in the manner specified below, at the following address(es):

Copies served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Lisa R. Burchi  
OF COUNSEL  
BERGESON & CAMPBELL P C  
2200 Pennsylvania Avenue, NW, Suite 100W  
Washington, D.C. 20037

Copy served via **Hand Delivery or Inter-Office Mail** to:

Alison M. Debes  
Senior Assistant Regional Counsel  
Office of Regional Counsel (3RC50)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(Attorney for Complainant)

Dated: \_\_\_\_\_

MAR 14 2019

*Bettina L Dunn*

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

TRACKING NUMBER(S):

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