

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC
FILED-2MAR2020AM10:38

In the Matter of:) Docket No. FIFRA-03-2020-0079
)
)
Sera North America, Inc.)
158 Keystone Drive) Proceeding Under Section 14(a) of the
Montgomeryville, Pennsylvania 18936) Federal Insecticide, Fungicide and
) Rodenticide Act, *as amended*, 7 U.S.C.
RESPONDENT.) § 136l(a)

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Sera North America, Inc. (hereinafter “Respondent ” or the “Company”) pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, *as amended* (“FIFRA”), 7 U.S.C. § 136l(a), and 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. Part 22.
2. Sections 9(c) and 14 of FIFRA, 7 U.S.C. §§ 136g(c) and 136l, authorize the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under FIFRA (or the “Act”) for the violations alleged herein.
3. The violations cited herein pertain to the Respondent’s alleged commission of unlawful acts by: selling and/or distributing unregistered pesticides in contravention of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and the pesticide registration requirements of Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and of 40 C.F.R. § 152.15; selling and/or distributing misbranded devices in contravention of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), and the labeling requirements of Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(a)(1)(D), and of 40 C.F.R. § 156.10(a)(1)(iv); and failing to file required reports in contravention of Section 12(a)(2)(N) of FIFRA, 7 U.S.C.

§ 136j(a)(2)(N), by failing to submit to the Administrator required Notices of Arrival (EPA form 3540-1) for shipments of imported pesticides and devices prior to the arrival of such shipments into the United States, pursuant to the requirements of 19 C.F.R. § 12.112(a).

4. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves this administrative proceeding through this Consent Agreement and Final Order.

II. JURISDICTION

5. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter as described in Paragraph 1, above, and pursuant to 40 C.F.R. §§ 22.1(a)(1) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, immediately above, the Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement and Final Order.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Respondent is a sub-chapter C corporation, organized in 2004 under the laws of the Commonwealth of Pennsylvania, and is a “person,” within the meaning and definition of Section 2(s) of FIFRA, 7 U.S.C. § 136(s). Respondent has one shareholder, Sera GmbH, a German corporation.
14. Respondent has operated as an aquarium supply distribution company from a single facility located at 158 Keystone Drive, Montgomeryville, Pennsylvania 18936 at all times herein relevant.
15. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), and 40 C.F.R. § 152.500(a), each define the term “device” to mean “any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than a bacterium, virus, or other microorganism on or in living man or living animals) but not including equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom.”
16. Pursuant to Section 25(c)(4) of FIFRA, 7 U.S.C. § 136w(c)(4), the Administrator may specify those classes of devices which shall be subject to any provision of FIFRA Section 2(q)(1), 7 U.S.C. § 136(q)(1), or FIFRA Section 7, 7 U.S.C. § 136e, upon his determination that application of such provision is necessary to effectuate the purposes of this Act.
17. On July 3, 1975, the Administrator promulgated regulations (at 40 F.R. 28242) amending the Code of Federal Regulations pursuant to this authority so as to provide that devices, as defined in FIFRA section 2(h), 7 U.S.C. § 136(h), are subject to the requirements of FIFRA section 2(q)(1)(A) – (G), 7 U.S.C. § 136(q)(1)(A) – (G) and to those provisions of FIFRA Section 7, 7 U.S.C. § 136e, which are necessary to effectuate the purposes of FIFRA with respect to devices.
18. Pursuant to FIFRA Section 2(p)(2), 7 U.S.C. § 136(p)(2), the term “labeling” means all labels and all other written, printed, or graphic matter— (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device . . . ”.

19. On October 14, 2008, EPA issued guidance to the general public regarding “Web Site Addresses on Pesticide Product Labeling,” which explains and instructs that: “. . . references to websites may be placed on labels. Be aware that such a reference transforms the website into labeling under FIFRA [S]sec[tion] 2(p)(2) and the website is subject to review by the Agency. . . .” *See*, <https://archive.epa.gov/pesticides/regulating/con-labels/web/pdf/weblabeling.pdf>.
20. On April 4, 2014, EPA also issued “Pesticide Registration Notice 2014-1 Web-Distributed Labeling for Pesticide Products,” which provides that: “Should the registrant wish to add or retain a reference to the company's website on the labeling, including by directing the user to the registrant’s primary website to download labeling, the registrant should be aware that the website becomes labeling under FIFRA and is subject to review by the Agency.”
21. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136a(t), the term “pest” means “(1) any insect, rodent, nematode, fungus, weed, or (2) 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, 7 U.S.C. §] 136w(c)(1). . . .”
22. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide,” means “(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 321(w) of title 21, that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 321(x) of title 21 bearing or containing a new animal drug.”
23. Pursuant to 40 C.F.R. § 167.3, the term “pesticidal product” means “a pesticide, active ingredient, or device.”
24. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), the term “producer” means “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide[;]” and the term “produce” means “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”

25. Pursuant to Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), the term “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.” [emphasis supplied].
26. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), 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.”
27. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides, with exceptions not herein applicable, that “no person in any State may distribute or sell to any person any pesticide that is not registered [with EPA]” and that “[t]o the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may by regulation limit the distribution, sale, or use in any State of any pesticide that is not registered [with EPA].”
28. 40 C.F.R. § 152.15 further provides, in relevant and applicable part, and with exceptions not herein applicable, that:

No person may distribute or sell any pesticide product that is not registered under the Act . . . [;] A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, *i.e.*, use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose,” and thus to be a pesticide requiring registration, if:

(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):

(1) [t]hat the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or . . .

* * *

(c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

29. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), and 40 C.F.R. § 156.10(a)(1)(iv) provide that a pesticide is misbranded if its label does not bear the registration number assigned under FIFRA section 136(e), 7 U.S.C. § 136(e), to each establishment in which it is produced.

30. 40 C.F.R. § 152.500(b)(1) provides that a device is subject to the requirements set forth in Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), and in 40 C.F.R. Part 156 and Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), makes it unlawful for any person in any State to distribute or sell to any person any device which is misbranded.
31. Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), is entitled “Importation of Pesticides and Devices,” and provides that the Secretary of the Treasury shall notify the Administrator of EPA of the arrival of pesticides and devices which are being imported into the United States.
32. Section 17(e) of FIFRA, 7 U.S.C. § 136o(e), is entitled “Regulations,” and further provides that the Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of FIFRA Section 17, subsection (c).
33. 19 C.F.R. § 12.112(a) specifies that an importer desiring to import pesticides or devices into the United States shall submit to the Administrator of EPA a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1 or “Notice of Arrival”), prior to the arrival of the shipment in the United States. Through the Notice of Arrival, the importer reports vital information to EPA such as the major active ingredients, quantity, port of entry, and points of contact, which allows EPA to make informed decisions, before pesticides arrive in the United States, as to whether such importation will pose unreasonable adverse effects on public health and the environment. The Notice of Arrival is a report, required by FIFRA, which must be filed with the Administrator, prior to the arrival of a pesticide shipment in the United States.
34. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it 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.
35. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), makes it unlawful for any person in any State to distribute or sell to any person any device which is misbranded.
36. Section 12(a)(2)(N) of FIFRA 7 U.S.C. § 136j(a)(2)(N), makes it unlawful for any person who is a registrant, wholesaler, dealer, retailer or other distributor to fail to file required reports.
37. On April 12, 2018, pursuant to Section 9(a) of FIFRA, 7 U.S.C. § 136g(a), duly authorized EPA representatives (“EPA Inspectors”) performed an establishment inspection (the “Inspection”) at the Respondent’s warehouse facility located at 158 Keystone Drive, Montgomeryville, Pennsylvania 18936 (the “Facility”).

38. On April 12, 2018, the Respondent maintained at the Facility, for sale and/or distribution in the United States, a supply of the products *sera phosvec clear*, *sera siporax algovec Professional*, *sera pond phosvec*, *sera pond algenstop*, and *sera snail collect*.
39. During the April 12, 2018 Facility Inspection, Respondent's representative provided the EPA Inspectors with copies of requested product labels and promotional literature pertaining to products offered for sale by the Respondent in the United States, including those products referenced in the preceding paragraph, and Respondent's representative subsequently provided production and sales information regarding such products to the EPA Inspectors on August 2, 2018.
40. Prior and subsequent to the April 12, 2018 Facility Inspection, EPA Inspectors reviewed information obtained about the various products, including those referenced above, that Respondent was offering for sale and/or distribution in the United States and about which Respondent had posted information on its publicly available Company web site.
41. Upon performing the product review referenced in the preceding paragraph, the EPA Inspectors ascertained that, at all times herein relevant, the Respondent clearly stated and/or implied, on product labels, product literature and/or on its Company web site, that the use each of the following products would prevent and/or mitigate algae growth and could or should be used as a pesticide:
 - a. the Respondent's product *sera phosvec clear*, which:
 - (1) had packaging that bore a product label which: (i) stated that "sera phosvec clear binds the cloudiness, removes excess phosphate and thus prevents algae growth;" (ii) contained neither an EPA Establishment Number nor an EPA Registration Number; but (iii) did contain the "DANGER" signal word; and
 - (2) the Respondent advertised and offered for sale on the Company's web site along with information about the product which: (i) stated that "sera phosvec clear immediately binds the cloudiness and makes them collectable by the filter. At the same time, it removes excess phosphate and thus prevents excess algae growth. For lastingly crystal clear and clean water;" and (ii) identified this product's active ingredient as 12% lanthanum(III) chloride heptahydrate, a compound commonly employed to remove phosphate from solutions via precipitation (*e.g.* in swimming pools) for the purpose of preventing algae growth.
 - b. the Respondent's product *sera siporax algovec Professional*, which:
 - (1) had packaging that bore a product label which: (i) stated that the product: "removes algae nutrients and prevents algae growth[.];" (ii) contained a

stop sign symbol over various types of algae on the right side of the front label; (iii) made claims that the product serves as a “biological filter media” but “without biocides”; (iv) made additional claims that the product “removes algae nutrients such as phosphate and prevents algae growth by nutrient competition;” and (v) contained no ingredient statement, signal word, downloadable information sheet from the Company’s website, EPA Establishment Number or EPA Registration Number; and

- (2) the Respondent advertised and offered for sale on the Company’s web site along with information about the product which stated that it: “. . . remove[s] algae nutrients - in particular phosphate - from the water and are therefore effective against undesired algae in the aquarium by using the nutrient competition principle. Algae growth is inhibited and the algae population is lastingly reduced. Algae blooms are prevented in case of prophylactic use.”

c. the Respondent’s product *sera pond phosvec*, which:

- (1) had packaging that bore a product label which contained neither an EPA Establishment Number nor an EPA Registration Number;
- (2) Included in its packaging, a product instruction sheet (also downloadable from the Company web site), that: (i) included the “DANGER” signal word; and (ii) identified the product’s active ingredient as lanthanum(III) chloride heptahydrate, a compound commonly employed to remove phosphate from solutions via precipitation (*e.g.* in swimming pools) for the purpose of preventing algae growth; and
- (3) the Respondent advertised and offered for sale on the Company’s web site along with information about the product which stated that it: “Protects against algae[;]” “Limit[s] nutrients[;]” provides “Nutrient competition for algae[;]” “Immediately binds phosphate[;]” and that the product “. . . binds phosphate quickly, gently and lastingly The uncontrolled multiplication of annoying algae is inhibited from the beginning and stopped lastingly by this effective, sustainable nutrient limiting preventive measure.”

d. the Respondent’s product *sera pond algenstop*, which:

- (1) had packaging that bore a Company product label which: (i) contained the phrases: “lastingly algae free[.]” “prevent algae growth[.]” “avoids algae growing anew[.]” and “stops thread and floating algae[.]” and neither lists an EPA Establishment Number nor an EPA Registration Number, and contains no signal word;

- (2) included a packaging label that referenced downloadable use information from the Company's web site and which indicated that the product contains 420 mg/100 ml copper sulfate, a known fungicide; and
 - (3) the Respondent advertised and offered for sale on the Company's web site along with additional information about the product, including claims that it: "Protects against algae[;]" "Limit[s] nutrients[;]" provides "Nutrient competition for algae[;]" "Immediately binds phosphate[;]" that the product ". . . binds phosphate quickly, gently and lastingly The uncontrolled multiplication of annoying algae is inhibited from the beginning and stopped lastingly by this effective, sustainable nutrient limiting preventive measure[;]" that the product is "the highly effective agent for controlling floating and thread algae in ponds[;]" and that "[i]t therefore not only helps in acute cases but also ensures a lastingly algae free pond.
42. In performing the product review referenced in paragraph 40, above, the EPA Inspectors also ascertained, on the basis of the following information, that at all times herein relevant, the Respondent's *sera snail collect* product:
- a. was packaged bearing a product label that:
 - (1) contained the pesticidal claim "snail trap;"
 - (2) incorporated a graphic illustration of a stop sign symbol over a snail;
 - (3) included no EPA Establishment Number; and
 - b. was advertised and offered for sale and/or distribution, on the Company's web site, with additional information and claims that the product ". . . is excellently suited for reducing strongly multiplying snails in aquariums. Snails are lured into the trap by some bait (e.g. sera O-Nip tablets). Their way back is blocked by pins. The undesired catching of fish is prevented by pins in the entry of the trap. The sera snail collect can alternatively be used for catching bristle worms in marine aquariums."
43. As a result of observations made and information obtained during and subsequent to the April 12, 2018 Facility Inspection, including a review of products offered for sale on the Respondent's web site and claims made about those products on product labels, information sheets and on the Respondent's publicly available web site, EPA Inspectors identified *sera phosvec clear*, *sera siporax algovec Professional*, *sera pond phosvec*, *sera pond algenstop* as pesticide products, and *sera snail collect* as a device, for which the Respondent was making pesticidal claims, had actual or constructive knowledge that each of these products would be used, or was intended to be used, for a pesticidal purpose, and

which the Respondent imported into the United States, held for distribution, and made available for sale and/or distribution in the United States.

44. Respondent's Montgomeryville, Pennsylvania Facility is an "establishment," within the meaning and definition of Section 2(dd) of the FIFRA, 7 U.S.C. § 136(dd), at which *sera phosvec clear*, *sera siporax algovec Professional*, *sera pond phosvec*, *sera pond algenstop*, pesticide products and *sera snail collect* devices were held during periods of time in calendar years 2016, 2017 and 2018, prior to distribution and/or sale to customers located in the United States.
45. Upon further investigation, EPA Inspectors confirmed that neither the Respondent, nor its sole shareholder (and foreign parent), Sera GmbH, had a pesticide producer establishment number with EPA and that none of the products that Respondent was offering for sale and/or distributing in the United States were registered with EPA.

V. VIOLATIONS ALLEGED

COUNTS 1 - 158

(SELLING / DISTRIBUTING UNREGISTERED PESTICIDES)

46. The allegations contained in each of the preceding Paragraphs of this Consent Agreement are incorporated by reference herein, as though fully set forth at length.
47. Respondent made each of the following distributions and/or sales, within the meaning of Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), of each of the following pesticides and devices to "persons," within the meaning and definition of Section 2(s) of FIFRA, 7 U.S.C. § 136(s), who were Company customers during the time period extending from January 13, 2017 through and including July 30, 2018:
 - a. Twelve (12) distributions and/or sales of the pesticide product *sera phosvec clear*;
 - b. One Hundred and Twenty-Eight (128) distributions and/or sales of the pesticide product *sera siporax algovec Professional*;
 - c. Nine (9) distributions or and/sales of the pesticide product *sera pond phosvec*; and
 - d. Nine (9) distributions and/or sales of the pesticide product *sera pond algenstop*.
48. The Respondent's *sera phosvec clear*, *sera siporax algovec Professional*, *sera pond phosvec*, *sera pond algenstop* pesticide products do not now, and did not at the time of any of the above-referenced distributions and/or sales, qualify for any of the registration exemption provisions of 40 C.F.R. §§ 152.20, .25, or .30.

49. The Respondent's *sera phosvec clear*, *sera siporax algovec Professional*, *sera pond phosvec*, *sera pond algenstop* pesticide products are not now, and were not at the time of any of the above-referenced distributions and/or sales, registered with the Agency pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15(a)(1).
50. Respondent's sales and/or distributions of its *sera phosvec clear*, *sera siporax algovec Professional*, *sera pond phosvec*, *sera pond algenstop* pesticide products, as identified in Paragraph 47, above, constitute one hundred and fifty-eight (158) separate sales and/or distributions of an unregistered pesticide in violation of Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and, therefore, one hundred and fifty-eight (158) separate unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNTS 159 - 517
(SELLING / DISTRIBUTING MISBRANDED DEVICES)

51. The allegations contained in each of the preceding Paragraphs of this Consent Agreement are incorporated by reference herein, as though fully set forth at length.
52. During the time period extending from January 4, 2017 through and including July 30, 2018, Respondent made three-hundred and fifty-nine (359) distributions and/or sales, to customers in the United States, of *sera snail collect* devices that did not bear a product label displaying any EPA establishment registration number required to be assigned to each establishment where the *sera snail collect* device was being produced.
53. Respondent's distributions and/or sales of its *sera snail collect* devices, as identified in Paragraph 52, immediately above, constitute three-hundred and fifty-nine (359) violations of the labeling requirements of 40 C.F.R. §156.10(a)(1)(iv) and of the of the misbranding prohibitions of Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).
54. Respondent's distributions and/or sales of its *sera snail collect* devices, as identified in Paragraph 52, above, also constitute three-hundred and fifty-nine (359) unlawful acts, in contravention of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNTS 518 - 522
***(FAILURE TO SUBMIT NOTICES OF ARRIVAL
FOR SHIPMENTS OF IMPORTED PESTICIDES AND DEVICES)***

55. The allegations contained in each of the preceding Paragraphs of this Consent Agreement are incorporated by reference herein, as though fully set forth at length.

56. During the time period extending from late in calendar year 2016 through and including calendar year 2018, Respondent imported into the United States one or more shipments of each of the pesticide products *sera phosvec clear*, *sera siporax algovec Professional*, *sera pond phosvec*, *sera pond algenstop*, and one or more shipments of the device *sera snail collect*, without the prior submission, to the EPA Administrator, of the Notice of Arrival (EPA form 3540-1) required pursuant to 19 C.F.R. § 12.112(a).
57. Respondent's import, into the United States, of the shipments of pesticide products and devices referenced in the preceding paragraph, without prior submission to the EPA Administrator of the required Notice of Arrival (EPA form 3540-1), constitutes five (5) or more violations of 19 C.F.R. § 12.112(a).
58. Respondent's import, into the United States, of the shipments of pesticide products and devices referenced in paragraph 56, above, without prior submission to the EPA Administrator of the required Notice of Arrival (EPA form 3540-1), also constitutes five (5) or more unlawful acts in contravention of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), for which a civil penalty may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

VI. CIVIL PENALTY

59. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **FORTY-THREE THOUSAND EIGHT HUNDRED DOLLARS (\$43,800.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
60. The civil penalty is based upon EPA's consideration of a number of factors, including the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on the Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *FIFRA Enforcement Response Policy*, dated December 2009 ("*ERP*"), which reflects the statutory penalty criteria and factors set forth at Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

61. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, *Docket No. FIFRA-03-2020-0079*;
- b. All checks shall be made payable to the "United States Treasury";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

A.J. D'Angelo
Sr. Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029
e-mail: dangelo.aj@epa.gov

62. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

63. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order were filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
64. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (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).
65. ADMINISTRATIVE COSTS: The costs of the EPA'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 – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
66. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
67. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

VII. GENERAL SETTLEMENT CONDITIONS

68. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order do not contain any confidential business information or personally identifiable information from Respondent.

69. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

VIII. CERTIFICATION OF COMPLIANCE

70. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

IX. OTHER APPLICABLE LAWS

71. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order do not constitute a waiver, suspension or modification of the requirements of FIFRA, or any regulations promulgated thereunder.

X. RESERVATION OF RIGHTS

72. This Consent Agreement and Final Order resolve only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after their effective date.

XI. EXECUTION /PARTIES BOUND

73. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

XII. EFFECTIVE DATE

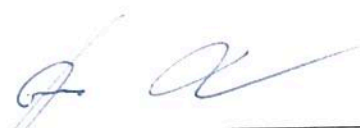
74. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

75. This Consent Agreement and Final Order constitute the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent:

Date: 02/12/2020

By: 


Mr. Josef Ravnak
President and General Manager
Sera North America, Inc.

In the Matter of:
Sera North America, Inc.

Consent Agreement
Docket No. FIFRA-03-2020-0079


After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: FEB 27 2020

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 2/19/2020

By: 
A.J. D'Angelo
Sr. Assistant Regional Counsel
Air & Toxics Branch (3RC50)
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC
FILED-2MAR2020am10:38

In the Matter of:)	Docket No. FIFRA-03-2020-0079
)	
Sera North America, Inc.)	
158 Keystone Drive)	Proceeding Under Section 14(a) of the
Montgomeryville, Pennsylvania 18936)	Federal Insecticide, Fungicide and
)	Rodenticide Act, <i>as amended</i> , 7 U.S.C.
RESPONDENT.)	§ 136l(a)

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Sera North America, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with 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. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 14(a)(4) of the Federal Insecticide, Fungicide and Rodenticide Act, *as amended* ("FIFRA"), 7 U.S.C. § 136l(a)(4), EPA's *FIFRA Enforcement Response Policy*, dated December 2009, the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and applicable implementing guidance.

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 of Practice*, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **FORTY-THREE THOUSAND EIGHT HUNDRED DOLLARS (\$43,800.00)** in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

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

Date: March 2, 2020



Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC
FILED-2MAR2020am10:39

In the Matter of:) Docket No. FIFRA-03-2020-0079
)
)
Sera North America, Inc.)
158 Keystone Drive) Proceeding Under Section 14(a) of the
Montgomeryville, Pennsylvania 18936) Federal Insecticide, Fungicide and
) Rodenticide Act, *as amended*, 7 U.S.C.
) § 136l(a)
RESPONDENT.)

CERTIFICATE OF SERVICE

I certify that on MAR 2 2020, the original and one (1) copy of the foregoing *Consent Agreement* and of the associated *Final Order*, each were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served true and correct copies of the same to each of the following persons, in the manner specified below, at the following addresses:

Copies served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, (Article No. 7001 2510 0001 1042 9467), to the following person at the following address:

Mr. Adam Kushner, Esq.
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
(Counsel for Respondent)

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

A.J. D'Angelo, Esq.
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
5th Floor, Office #110
Philadelphia, Pennsylvania 19103-2029
(Attorney for Complainant)

MAR 2 2020

Date



Regional Hearing Clerk (3RC00)

U.S. EPA, Region III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

Tracking No. 7001 2510 0001 1042 9467