

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 3

Philadelphia, Pennsylvania 19103

FILED

Apr 01, 2024

10:43 am

U.S. EPA REGION 3
HEARING CLERK

IN RE: : U.S. EPA Docket No. FIFRA-03-2024-0040
:
AIONX ANTIMICROBIAL :
TECHNOLOGIES, INC. :
1001 LIBERTY AVENUE, 11TH FLOOR : Proceeding under: Section 14 of the
PITTSBURGH, PA 15222 : Federal Insecticide, Fungicide and
: Rodenticide Act, as amended, 7 U.S.C.
: § 136/
:
Respondent :

EXPEDITED SETTLEMENT AGREEMENT

1. AIONX Antimicrobial Technologies, Inc. ("Respondent") and the Director, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 ("Complainant") enter into this Expedited Settlement Agreement ("Agreement") pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), *as amended*, 7 U.S.C. § 136(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. § 22.13(b) and 22.18(b). The Administrator has delegated the authority to enter this Agreement to the Regional Administrator who, in turn, has delegated it to the Complainant.
2. The U.S. Environmental Protection Agency, Region 3 has jurisdiction over this matter pursuant to Section 14(a) of the FIFRA, 7 U.S.C. § 136(a), and 40 C. F.R. Part 22 of the Consolidated Rules of Practice, including specifically 40 C.F.R. §§ 22.1, 22.13(b) and 22.18(b).
3. At all times relevant to the allegations described in this Agreement, Respondent was a "person" and a "producer" as those terms are defined in Sections 2(s) and (w) of FIFRA, 7 U.S.C. §§ 136(s) and (w) and 40 C.F.R. § 167.3 and an operator of an "establishment", as that term is defined in Section 2(dd) of FIFRA, 7 U.S.C. §§ 136(dd) and 40 C.F.R. § 167.3. This establishment is registered with EPA under establishment number 91681-PA-1. The establishment, "AIONX Executive Offices", is located at 515 Rear West Chocolate Avenue, Hershey PA 17033.
4. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which it is producing, which it has produced during the past year, and

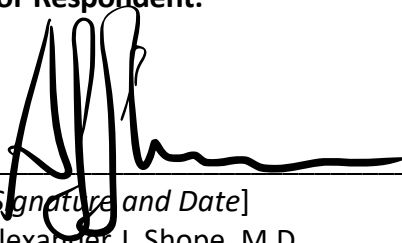
which it has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe. The regulation found at 40 C.F.R § 167.85(d) requires such pesticides report to be filed annually on or before March 1, even if the producer has produced no pesticidal products for that reporting year. Respondent failed to comply with these regulations.

5. Complainant has identified the following violations:
 - a. On March 1, 2023, Respondent failed to file the 2022 annual pesticide production report (EPA Form 3540-16) for the above facility by March 1, 2023, as required by Section 7(c) of FIFRA, 2 U.S.C. § 136e(c) and 40 C.F.R. § 167.85(d). In failing to comply with Section 7(c) of FIFRA, 2 U.S.C. § 136e(c) and 40 C.F.R. § 167.85(d), Respondent is subject to the assessment of penalties under Section 14 (a) of FIFRA, 7 U.S.C. § 136l(a).
6. Under EPA's *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements*, updated May 2010, EPA may reduce a civil penalty to zero when a producer who has failed to submit a timely production report under Section 7(c)(1) of FIFRA reports no pesticide production and requests termination of the establishment's registration number within 20 days after receiving written notification of the violation by EPA.
7. In correspondence provided within 20 days of receiving EPA's notice of the violation alleged herein, Respondent reported that it produced no pesticides at the establishment located at 515 Rear West Chocolate Avenue, Hershey, Pennsylvania in calendar years 2022 and 2023, and requested that the establishment registration number EPA Est. No.: 91681-PA-1 be terminated.
8. Complainant and Respondent agree that settlement of this matter for a penalty of **\$0.00 (ZERO DOLLARS)** is in the public interest. In calculating this amount, Complainant considered the statutory factors listed in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), as well as EPA's *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements*, updated May 2010, ("*ERP*") and the June 21, 2019, *FIFRA Section 7(c) Expedited Settlement Agreement Program*.
9. In signing this Agreement, the Respondent: admits the jurisdictional allegations in this Agreement; neither admits nor denies the specific factual allegations in this Agreement, except as provided in the jurisdictional admission above; agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement the Agreement; expressly waives its right to a hearing on any issue of law or fact in this Agreement and any right to appeal the accompanying Final Order; consents to the issuance of the Agreement and agrees to comply with its terms; agrees to bear its own costs and attorney's fees; and agrees not to deduct for federal tax purposes the civil penalty

assessed in this CAFO.

10. By its signature below, the Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that (1) he or she has corrected the alleged violations, and (2) any documentation or information that he or she provided to EPA was true and accurate.
11. The Agreement and the attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement.
12. 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 Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the FIFRA, the FIFRA regulations promulgated, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement and Final Order, following its filing with the Regional Hearing Clerk.
13. This Agreement is binding on the parties signing below and is effective upon filing, in accordance with 40 C.F.R. § 22.31(b), pursuant to Section 14(a) of the FIFRA, 7 U.S.C. § 136/(a).
14. The undersigned representative certifies that she/he is fully authorized to execute this Agreement and to legally bind Respondent.
15. As permitted under 40 CFR § 22.6, the Regional Hearing Clerk will serve copies of this Agreement and Final Order by e-mail to the parties at the following valid e-mail addresses: convery.christine@epa.gov (for Complainant), and ashope@cleanscreens.com (for Respondent).
16. By signing this Agreement, Respondent acknowledges that this Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

For Respondent:

A handwritten signature in black ink, appearing to read 'AJS', written over a horizontal line.

3/27/2024

[Signature and Date]

Alexander J. Shope, M.D.

Chief Executive Officer

AIONX Antimicrobial Technologies, Inc.

For Complainant: U.S. Environmental Protection Agency, Region 3

After reviewing the Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

[Digital Signature and Date]

Karen Melvin, Director

Enforcement and Compliance Assurance Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 3
Philadelphia, Pennsylvania 19103

FILED

Apr 01, 2024

10:44 am

U.S. EPA REGION 3
HEARING CLERK

IN RE: : U.S. EPA Docket No. FIFRA-03-2024-0040
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AIONX ANTIMICROBIAL :
TECHNOLOGIES, INC. : Proceeding under: Section 14 of the
1001 LIBERTY AVENUE, 11th FLOOR : Federal Insecticide, Fungicide and
PITTSBURGH, PENNSYLVANIA 15222 : Rodenticide Act, as amended, 7 U.S.C.
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:
Respondent :

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, AIONX Antimicrobial Technologies, Inc., have executed a document entitled "Expedited Settlement 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 EXPEDITED SETTLEMENT AGREEMENT are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Expedited Settlement Agreement, the penalty agreed to therein took into account the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), as well as EPA's *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements*, updated May 2010 ("ERP") and the June 21, 2019, *FIFRA Section 7(c) Expedited Settlement Agreement Program*.

NOW, THEREFORE, PURSUANT TO Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136(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 **\$0.00 (ZERO DOLLARS)**, in accordance with the payment provisions set forth in the Expedited Settlement Agreement, and comply with the terms and conditions of the Expedited Settlement 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 Expedited Settlement Agreement and does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA, 7 U.S.C. § 136f, and the regulations promulgated thereunder.

The effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk, pursuant to Section 14(a) of the FIFRA, 7 U.S.C. Section 136f(a).

[Digital Signature and Date]

Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region 3

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103-2029**

IN RE: :
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AIONX ANTIMICROBIAL TECHNOLOGIES, INC. : DOCKET NO. FIFRA-03-2024-0040
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CERTIFICATE OF SERVICE

I certify that the foregoing ***Expedited Settlement Agreement and Final Order***, was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the ***Expedited Settlement Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via email to:

Dr. Alexander Shope
Chief Executive Officer
AIONX Antimicrobial Technologies, Inc.
ashope@cleanscreens.com

Christine Convery
Compliance and Enforcement Officer
U.S. EPA, Region 3
Convery.christine@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. EPA Region 3