

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**



In the Matter of:)	Docket No. FIFRA-05-2024-0007
)	
Agroscience International, Inc. and)	Proceeding to Assess a Civil Penalty
Planet Earth Creations, Inc.)	Under Section 14(a) of the Federal
Commerce Charter Township, Michigan)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
Respondents.)	
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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. Respondents are Agroscience International, Inc. (Agroscience) and Planet Earth Creations, Inc. (PEC), each a corporation doing business in the state of Michigan.

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. Respondents consent 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. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waives their 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 their right to appeal this CAFO.

9. Respondents certify that they are complying with FIFRA, 7 U.S.C. §§ 136-136y, and the regulations promulgated thereunder.

Statutory and Regulatory Background

10. 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.

11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), defines a pesticide as “misbranded” if any word, statement, or other information required by or under authority of FIFRA, Subchapter II, 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.

12. 40 C.F.R § 156.140(a)(4) states, in pertinent part, that pesticides packaged in nonrefillable containers are required to include on the label or container a lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold.

13. 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 Sections 5, 7, 8, 11 or 19 of FIFRA.

14. 40 C.F.R. § 169.2(a) states, in relevant part, that all producers of pesticides shall maintain records showing the product name, EPA Registration Number, amounts per batch and batch identification of all pesticides produced, retained for a period of two years.

15. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA.

16. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 require any producer operating an establishment registered with EPA under Section 7 of FIFRA to inform the Administrator of EPA within 30 days after it is registered, and annually thereafter, of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides which the producer is currently producing, has produced in the past year, and has sold or distributed during the past year.

17. 40 C.F.R. § 167.85(c) specifies that the report must be made on a form supplied by EPA, titled the Pesticide Report for Pesticide-Producing and Device-Producing Establishments, EPA Form 3540-16 (Pesticide Production Report). It is the ultimate responsibility of the producer to obtain, complete and submit the form each year.

18. 40 C.F.R. § 167.85(d) requires the producer to submit the annual Pesticide Production Report for the preceding year to EPA on or before March 1 of each year, even if the producer has produced no pesticide product for that reporting year.

19. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

20. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.”

21. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “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 which the Administrator [of the EPA] declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

22. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” *See also* 40 C.F.R. § 152.3.

23. 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.

24. 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.

25. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “producer” as “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.”

26. Section 2(y) of FIFRA, 7 U.S.C. § 136(w), defines the term “registrant” as “a person who has registered any pesticide pursuant to the provisions of [FIFRA, Subchapter II]”.

27. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines the term “establishment” as “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”

28. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as “written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

29. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$23,494 for each offense that occurred after November 2, 2015, and assessed on or after January 6, 2023, 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

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

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

32. The pesticide **Hammer Head PGR**, EPA Reg. No. 92522-2, was registered with EPA on October 24, 2019, by Respondent Agrosience.

33. The place of business located at 1801 Rock Road, Commerce Charter Township, Michigan, EPA Establishment Number 92522-MI-1 (the Facility), was registered with EPA as a pesticide producing establishment in August, 2016, by Respondent Agrosience.

34. Respondent Agrosience has been a “producer” and a “registrant” as those terms are defined at Sections 2(w) and (y) of FIFRA, 7 U.S.C. §§ 136(w) and (y), at all times relevant to this CAFO.

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

36. At all times relevant to this CAFO, Respondents Agrosience and PEC owned or operated the Facility.

37. On August 4, 2021, an inspector employed by the Michigan Department of Agriculture and Rural Development (MDARD) and authorized to conduct inspections under FIFRA conducted an inspection at the Facility (the Inspection).

38. As part of the Inspection, among other things, the inspector took statements and photographs, and collected various records for **Hammer Head PGR** (EPA Reg. No. 92522-2) which was produced at the Facility at the time of the Inspection.

39. **Hammer Head PGR** (EPA Reg. No. 92522-2) is a “pesticide” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Misbranded Hammer Head PGR (EPA Reg. No. 92522-2)

40. During the August 4, 2021, Inspection, the inspector observed and collected bin labels for 1-quart, 1-gallon, 2.5-gallon, and 5-gallon containers of **Hammer Head PGR** (EPA Reg. No. 92522-2) that specified the containers as nonrefillable.

41. During the Inspection, the inspector observed that nonrefillable containers of **Hammer Head PGR** (EPA Reg. No. 92522-2) released for shipment did not include a batch or lot code on the label or elsewhere on the container.

42. During the Inspection, a representative for the Respondents stated that they had not placed a batch code on the containers of **Hammer Head PGR** (EPA Reg. No. 92522-2) produced and distributed prior to the date of the Inspection. A batch code system was developed immediately after the Inspection.

43. Under 40 C.F.R. 156.140(a)(4), nonrefillable containers must bear a batch code or lot number to identify the batch of the pesticide product which is sold or distributed.

44. Respondent PEC sold or distributed the pesticide product **Hammer Head PGR** (EPA Reg. No. 92522-2), in nonrefillable containers without a batch code from the Facility on or about the dates identified below, with the corresponding invoice numbers:

- | | |
|--------------------------------------|--------------------------------------|
| a. January 6, 2020 (Invoice #1264) | i. December 30, 2020 (Invoice #1371) |
| b. January 14, 2020 (Invoice #1270) | j. January 21, 2021 (Invoice #1375) |
| c. January 24, 2020 (Invoice #1272) | k. April 9, 2021 (Invoice #1384) |
| d. March 27, 2020 (Invoice #1295) | l. April 30, 2021 (Invoice #1387) |
| e. June 10, 2020 (Invoice #1317) | m. May 10, 2021 (Invoice #1389) |
| f. July 27, 2020 (Invoice #1331) | n. June 15, 2021 (Invoice #1395) |
| g. December 14, 2020 (Invoice #1367) | o. July 19, 2021 (Invoice #1399) |
| h. December 18, 2020 (Invoice #1369) | p. July 19, 2021 (Invoice #1400) |

Recordkeeping

45. During the Inspection, the inspector requested production records for **Hammer Head PGR** (EPA Reg. No. 92522-2).

46. Respondent Agrosience did not maintain production records showing the product name, EPA Registration Number, amounts per batch, and batch identification as required by 40 C.F.R. § 169.2(a) for batches of **Hammer Head PGR** (EPA Reg. No. 92522-2) produced prior to the date of the Inspection.

47. During calendar year 2020, Respondent Agrosience failed to maintain any production records for **Hammer Head PGR** (EPA Reg. No. 92522-2).

48. On December 3, 2021, Respondent Agrosience sent the inspector production records for **Hammer Head PGR** (EPA Reg. No. 92522-2) for batches produced from August 6, 2021, through November 23, 2021.

49. The production records for **Hammer Head PGR** (EPA Reg. No. 92522-2) that were provided on December 3, 2021, did not include the EPA Registration Number as required by 40 C.F.R. § 169.2(a).

50. During calendar year 2021, Respondent Agrosience failed to maintain complete production records for **Hammer Head PGR** (EPA Reg. No. 92522-2).

2018 and 2020 Pesticide Reports

51. Pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, Respondent Agrosience registered its establishment with EPA in August 2016, under EPA Establishment Number 92522-MI-1.

52. During calendar years 2018 and 2020, Respondent Agrosience's establishment was registered with EPA under Section 7 of FIFRA, 7 U.S.C. § 136(e).

53. Respondent Agrosience's Annual Pesticide Production Reports for calendar years 2018 and 2020 were due to EPA on or before March 1, 2019, and March 1, 2021, respectively.

54. As of the date of this CAFO, Respondent Agrosience has failed to submit its annual Pesticide Production Reports for calendar years 2018 and 2020 for its establishment to EPA.

55. Respondent Agrosience's failure to submit timely to EPA its annual Pesticide Production Reports for calendar years 2018 and 2020 violated Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1).

Counts 1 – 16

56. Complainant incorporates paragraphs 1 - 44 of this CAFO as though set forth in this paragraph.

57. Between January 6, 2020, and July 19, 2021, inclusive, Respondent PEC distributed or sold **Hammer Head PGR** (EPA Reg. No. 92522-2) which was misbranded, as that term is defined in Paragraph 11, on sixteen separate occasions from the Facility.

58. Respondent PEC's distribution or sale of the misbranded pesticide, **Hammer Head PGR** (EPA Reg. No. 92522-2), constitutes sixteen separate unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

59. Respondent PEC's violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent PEC to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Counts 17 – 18

60. Complainant incorporates paragraphs 1 – 39 and 45 – 50 of this CAFO as though set forth in this paragraph.

61. Respondent Agrosience failed to maintain any production records for **Hammer Head PGR** (EPA Reg. No. 92522-2) produced in 2020.

62. Respondent Agrosience failed to place the EPA Registration Number on production records for **Hammer Head PGR** (EPA Reg. No. 92522-2) produced in 2021, thereby failing to maintain complete production records for **Hammer Head PGR** (EPA Reg. No. 92522-2) produced in 2021.

63. Respondent Agrosience's failure to maintain complete production records for **Hammer Head PGR** (EPA Reg. No. 92522-2), as required by 40 C.F.R. §§ 169.2(a), in 2020 and 2021 constitutes two unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

64. Respondent Agrosience's violations of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), subject Respondent Agrosience to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Counts 19 – 20

65. Complainant incorporates paragraphs 1- 39 and 51 – 55 of this CAFO as though set forth in this paragraph.

66. Respondent Agrosience failed to submit its annual Pesticide Production Reports for calendar years 2018 and 2020 for its establishment to EPA prior to their respective due dates.

67. Respondent Agrosience's failure to submit timely to EPA its annual Pesticide Production Reports for calendar years 2018 and 2020 violated Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

68. Respondent Agrosience's violations of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), subject Respondent Agrosience to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

69. 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 \$27,064. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondents' businesses, the effect on the Respondents' ability to continue in business, and the gravity of the violations. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

70. Within 30 days after the effective date of this CAFO, Respondents must pay a \$27,064 civil penalty for the FIFRA violations by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

71. Respondents must send a notice of payment that states Respondents' names and the case docket number to EPA at the following e-mail addresses when the penalty is paid:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Angela Bouche (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
bouche.angela@epa.gov
and
R5lecab@epa.gov

Kevin Chow (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
chow.kevin@epa.gov

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

73. If Respondents do 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.

74. Pursuant to 31 C.F.R. § 901.9, Respondents 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. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondents must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

75. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: chow.kevin@epa.gov (for Complainant), and planetearthcorp@gmail.com (for Respondents). Respondents understand that the CAFO will become publicly available upon filing.

76. The Respondents' full compliance with this CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in the CAFO.

77. 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.

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

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

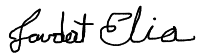
80. The terms of this CAFO bind Respondents, their successors, and assigns.

81. 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.

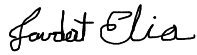
82. Each party agrees to bear its own costs and attorney's fees, in this action.

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

Agroscience International, Inc., Respondent

1/16/2024	
_____ Date	_____ Jawdat Elia President Agroscience International, Inc.

Planet Earth Creations, Inc., Respondent

1/16/2024	
_____ Date	_____ Jawdat Elia President Planet Earth Creations, Inc.

United States Environmental Protection Agency, Complainant

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
Agroscience International, Inc. and Planet Earth Creations, Inc.
Docket No.: FIFRA-05-2024-0007**

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 L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5