

**FILED**

Sep 10, 2024

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U.S. EPA REGION 5  
HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2024-0012</b>
	)	
<b>Sussex IM, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Sussex, Wisconsin,</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
<b>Respondent.</b>	)	<b>Act, 7 U.S.C. § 136l(a)</b>
<hr/>	)	

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative proceeding to assess a civil penalty 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, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Sussex IM, Inc., a corporation doing business in the State of Wisconsin.

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). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y and the regulations at 40 C.F.R. §§ 167.3-167.90 and 40 C.F.R. §§ 169.1-169.3.

### **Statutory and Regulatory Background**

10. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), authorizes the EPA Administrator to prescribe regulations requiring producers, registrants, and applicants for registration to maintain records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of FIFRA.

11. 7 U.S.C. § 136(w) defines a “producer” as any “person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.” *See also* 40 C.F.R. § 167.3.

12. 40 C.F.R. § 167.3 defines “produce” as “to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of FIFRA, any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.”

13. The term “distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” 7 U.S.C. § 136(gg).

14. 7 U.S.C. § 136(dd) defines “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.” *See also* 40 C.F.R. § 167.3.

15. 7 U.S.C. § 136(u) defines “pesticide” as, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.<sup>1</sup> *See also* 40 C.F.R. § 260.10.

16. 40 C.F.R. § 167.85(a) requires each “producer” operating an “establishment” to submit each year to EPA the reports required 40 C.F.R. § 167.85(b), concerning any pesticide, active ingredient, or device produced at each establishment (hereinafter referred to as the “Pesticide Report”).

17. The Pesticide Report must include: 1) the name and address of the establishment; 2) the amount of each pesticidal product: a) produced during the past year; (ii) sold or distributed during the past year; and (iii) estimated to be produced during the current year. *See* 40 C.F.R. § 167.85(b). The Pesticide Report shall only include those pesticidal products actually produced at the reporting establishment. *See id.*

18. 40 C.F.R. § 167.85(c) requires the producer to obtain, complete and submit annually the Pesticide Report on the reporting form supplied by EPA, “EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments,” (EPA Form 3540-16).

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<sup>1</sup> A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1). *See* 7 U.S.C. § 136(t).

19. EPA Form 3540-16 requires, among other things: 1) identification of the establishment; 2) identification of the company; 3) an authorized signature and signature date; and 4) specific pesticide production information.

20. 40 C.F.R. § 167.85(d) requires the producer to file its pesticide-production report every year on or before March 1, even if the producer has not produced any pesticidal products for that reporting year.

21. 40 C.F.R. § 169.2(a) requires all producers of pesticides, devices, or active ingredients used in producing pesticides subject to FIFRA, to maintain records for all pesticides produced showing the: 1) product name; 2) EPA Registration Number; 3) Experimental Use Permit Number (if applicable); 4) amounts per batch, and 5) batch identification (numbers, letters, etc.).<sup>2</sup>

22. 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 producer shall keep this information current and submit it to EPA each as required under such regulations as EPA may prescribe.

23. Pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), it is unlawful for any person to refuse to prepare, maintain, or submit any records required by or under, *inter alia*, Sections 7 and 8 of FIFRA.

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<sup>2</sup> EPA promulgated 40 C.F.R. § 169.2 pursuant to its authority under, *inter alia*, Section 8 of FIFRA, 7 U.S.C. § 136f(a). See 45 Federal Register 54338 (Aug. 15, 1980).

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

25. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, 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 \$24,255 for each offense where penalties are assessed on or after December 27, 2023.

### **EPA's Factual Allegations and Alleged Violations**

26. At all times relevant to this CAFO, Respondent was a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

27. At all times relevant to this CAFO, Respondent was a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w) of:

- a. “Recruit HD,” EPA Reg. No. 62719-608 (“Recruit HD”); and
- b. “Off Backyard Mosquito Lamp Refills,” EPA Reg. No. 4822-605 (“Off Backyard Mosquito Lamp Refills”).

28. At all times relevant to this CAFO, Respondent “distributed or sold” “Recruit HD and “Off Backyard Mosquito Lamp Refills,” as defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and thus is a “distributor” and “seller” of those products.

29. At all times relevant to this CAFO, Respondent owned or operated a place of business at N65 W24770 Main Street, Sussex, Wisconsin 53089 (the Sussex Establishment).

30. At all times relevant to this CAFO, the Sussex Establishment was an “establishment” as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

31. At all times relevant to this CAFO, the Sussex Establishment was registered as a pesticide-producing establishment under Section 7 of FIFRA, 7 U.S.C. § 136e.

32. On or about January 23, 2020, Respondent submitted to EPA, the EPA Form 3540-16 for the Sussex Establishment for calendar year 2019.

33. On or about January 12, 2021, Respondent submitted its EPA Form 3540-16 to EPA for the Sussex Establishment for calendar year 2020.

34. On or about January 21, 2022, Respondent submitted its EPA Form 3540-16 to EPA for the Sussex Establishment for calendar year 2021.

35. On or about January 20, 2023, Respondent submitted its EPA Form 3540-16 to EPA for the Sussex Establishment for calendar year 2022.

36. On March 2, 2022, an inspector employed by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (Inspector) and authorized to conduct inspections under FIFRA, conducted an inspection at Respondent's Sussex Establishment.

37. During the March 2, 2022, inspection, the Inspector requested, among other documents, records of production of "Recruit HD" which Respondent was producing at the Sussex Establishment.

38. On or about March 7, 2022, Respondent provided, *inter alia*, records of production of "Recruit HD" produced at the Sussex establishment on or about the following dates: April 13, 2021, May 18, 2021, June 5, 2021, July 9, 2021, August 19, 2021, September 28, 2021, October 27, 2021, November 18, 2021, December 28, 2021, January 12, 2022, February 27, 2022, and March 2, 2022 (hereinafter collectively referred to as "the Recruit HD Production Records").

39. On or about July 8, 2022, EPA requested, among other documents, records of production and copies of labels used in the production of "Off Mosquito Lamp and Lantern Refills" conducted at the Sussex Establishment (the July 8, 2022 Request).

40. In response to the July 8, 2022, Request, Respondent provided records on or about August 17, 2022, including, *inter alia*, labels and records of production for “Off Mosquito Lamp and Lantern Refills” (the August 17, 2022, Production).

41. The August 17, 2022, Production included records documenting Respondent’s production of “Off Backyard Mosquito Lamp Refills” during the calendar years 2019, 2020, 2021, and 2022.

42. The label provided by Respondent in the August 17, 2022, Production identified the product’s name to be “Off Backyard Mosquito Lamp Refills” and stated “EPA Reg. No. 4822-605.”

### **Count 1**

43. Complainant incorporates by reference the allegations contained in paragraphs 1 through 42 of this CAFO.

44. At all times relevant to this CAFO, “Recruit HD,” was a “pesticide” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

45. Because “Recruit HD” was a “pesticide,” Respondent was required to comply with the recordkeeping requirements of, *inter alia*, 40 C.F.R. § 169.2(a).

46. Respondent’s “Recruit HD” Production Records did not contain or identify in the “Recruit HD” batch records the product’s registration number assigned under Section 3 of FIFRA, as required by 40 C.F.R § 169.2(a).

47. Respondent’s failure to maintain records required by 40 C.F.R § 169.2(a) violated Section 8 of FIFRA, thus constituting an unlawful act under Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

## Count 2

48. Complainant incorporates by reference the allegations contained in paragraphs 1 through 42 of this CAFO.

49. At all times relevant to this CAFO, “Off Backyard Mosquito Lamp Refills,” EPA Reg. No. 4822-605, was a “pesticide,” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

50. Because “Off Backyard Mosquito Lamp Refills,” was a “pesticide,” Respondent was required to comply with the recordkeeping requirements of, *inter alia*, 40 C.F.R. § 167.85(b) and Section 7(c) of FIFRA, 7 U.S.C. § 136e(c).

51. Respondent produced “Off Backyard Mosquito Lamp Refills” at the Sussex Establishment during calendar year 2019.

52. On or about January 23, 2020, Respondent submitted to EPA its EPA Form 3540-16 for calendar year 2019 (2019 3540-16 Form).

53. In its 2019 3540-16 Form, Respondent did not identify the production and subsequent distribution of “Off Mosquito Lamp and Lantern Refills,” as required by 40 C.F.R. § 167.85(b).

54. Respondent’s failure to report the production of a pesticide produced at the Sussex Establishment during calendar year 2019, as required by 40 C.F.R § 167.85(b), violated Section 7 of FIFRA, 7 U.S.C. § 136e(c), thus constituting an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).



### **Count 3**

55. Complainant incorporates by reference the allegations contained in paragraphs 1 through 42 of this CAFO.

56. At all times relevant to this CAFO, “Off Backyard Mosquito Lamp Refills,” EPA Reg. No. 4822-605, was a “pesticide,” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

57. Because “Off Backyard Mosquito Lamp Refills,” was a “pesticide,” Respondent was required to comply with the recordkeeping requirements of, *inter alia*, 40 C.F.R. § 167.85(b) and Section 7(c) of FIFRA, 7 U.S.C. § 136e(c).

58. Respondent produced “Off Backyard Mosquito Lamp Refills,” EPA Reg. No. 4822-605, at the Sussex Establishment during calendar year 2020.

59. On or about January 12, 2021, Respondent submitted the EPA Form 3540-16 for calendar year 2020 which did not identify the production and subsequent distribution of “Off Mosquito Lamp and Lantern Refills,” EPA Reg. No. 4822-605, as required by 40 C.F.R. § 167.85(b).

60. Respondent’s failure to report the production of a pesticide produced at the Sussex establishment during calendar year 2020, as required by 40 C.F.R. § 167.85(b), violated Section 7 of FIFRA, 7 U.S.C. § 136e(c), thus constituting an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

#### **Count 4**

61. Complainant incorporates by reference the allegations contained in paragraphs 1 through 42 of this CAFO.

62. At all times relevant to this CAFO, “Off Backyard Mosquito Lamp Refills,” EPA Reg. No. 4822-605, was a “pesticide,” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

63. Because “Off Backyard Mosquito Lamp Refills,” was a “pesticide,” Respondent was required to comply with the recordkeeping requirements of, *inter alia*, 40 C.F.R. § 167.85(b) and Section 7(c) of FIFRA, 7 U.S.C. § 136e(c).

64. Respondent produced “Off Backyard Mosquito Lamp Refills,” EPA Reg. No. 4822-605, at the Sussex establishment during calendar year 2021.

65. On or about January 21, 2022, Respondent submitted the EPA Form 3540-16 for calendar year 2021 which did not identify the production and subsequent distribution of “Off Mosquito Lamp and Lantern Refills,” EPA Reg. No. 4822-605, as required by 40 C.F.R. § 167.85(b).

66. Respondent’s failure to report the production of a pesticide produced at the Sussex establishment during calendar year 2021, as required by 40 C.F.R. § 167.85(b), violated Section 7 of FIFRA, 7 U.S.C. § 136e(c), thus constituting an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

### **Count 5**

67. Complainant incorporates by reference the allegations contained in paragraphs 1 through 42 of this CAFO.

68. At all times relevant to this CAFO, “Off Backyard Mosquito Lamp Refills,” EPA Reg. No. 4822-605, was a “pesticide,” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

69. Because “Off Backyard Mosquito Lamp Refills,” was a “pesticide,” Respondent was required to comply with the recordkeeping requirements of, *inter alia*, 40 C.F.R. § 167.85(b) and Section 7(c) of FIFRA, 7 U.S.C. § 136e(c).

70. Respondent produced “Off Backyard Mosquito Lamp Refills,” EPA Reg. No. 4822-605, at the Sussex establishment during calendar year 2022.

71. On or about January 20, 2023, Respondent submitted the EPA Form 3540-16 for calendar year 2022 which did not identify the production and subsequent distribution of “Off Mosquito Lamp and Lantern Refills,” EPA Reg. No. 4822-605, as required by 40 C.F.R. § 167.85(b).

72. Respondent’s failure to report the production of a pesticide produced at the Sussex establishment during calendar year 2022, as required by 40 C.F.R. § 167.85(b), violated Section 7 of FIFRA, 7 U.S.C. § 136e(c), thus constituting an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

### Civil Penalty

73. 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 \$28,795. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009 and Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements, dated May 2010.

74. Within 30 days after the effective date of this CAFO, Respondent must pay a \$28,795 civil penalty for the FIFRA violations by one of the following payment methods:

- a. sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979078  
St. Louis, Missouri 63197-9000

- b. sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979078  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Sussex IM and the docket number of this CAFO.

- c. electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Sussex IM and the docket number of this CAFO.

- d. ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state Sussex IM and the docket number of this CAFO.

- e. an on-line payment. To pay on-line, go to [www.pay.gov](http://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.

75. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

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

Claudia Niess, Enforcement Officer  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
[niess.claudia@epa.gov](mailto:niess.claudia@epa.gov)  
and  
[R5lecab@epa.gov](mailto:R5lecab@epa.gov)

John Matson, Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
[matson.john@epa.gov](mailto:matson.john@epa.gov)

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

77. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the United States 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.

78. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

79. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [matson.john@epa.gov](mailto:matson.john@epa.gov) (for Complainant), and [MTzanoukakis@sussexim.com](mailto:MTzanoukakis@sussexim.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

81. 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.

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

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

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

85. 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.

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

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

**Sussex IM, Inc., Respondent**

\_\_\_\_\_  
Date 8/16/24

\_\_\_\_\_  
[Person's name] Megan Tzanoukakis  
[Person's title] President / CEO  
Sussex IM, Inc.

**United States Environmental Protection Agency, Complainant**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division



**In the Matter of:  
Sussex IM, Inc.  
Docket No. FIFRA-05-2024-0012**

**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.

\_\_\_\_\_  
Date

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