

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

FILED

Jan 13, 2025

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U.S. EPA REGION 4
HEARING CLERK

In the Matter of:

Halton Company,

Respondent.

Docket No. **FIFRA-04-2024-3024(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act), as amended, 7 U.S.C. § 136/(a), and Sections 22.13(b) and 22.18 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 Title 40 of the Code of Federal Regulations (C.F.R.) Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions of FIFRA and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is Director of the Enforcement and Compliance Assurance Division, of the Region 4 office of the United States Environmental Protection Agency (EPA), who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 14(a) of FIFRA, 7 U.S.C. § 136/(a).
5. Respondent is Halton Company, a corporation doing business in the Commonwealth of Kentucky. This proceeding pertains to Respondent's facility located at 101 Industrial Drive, Scottsville,

Kentucky 42164 (the "Industrial Drive Facility") and its facility located at 200 Johnson Road in Scottsville, Kentucky 42164 (the "Johnson Road Facility").

III. GOVERNING LAW

6. The term "label" is defined in Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), to mean the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
7. The term "labeling" is defined in Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), to mean 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.
8. The term "person" is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
9. The term "pest" is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), to mean: (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.
10. The term "pesticide" is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
11. The term "device" is defined in Section 2(h) of FIFRA, 7 U.S.C. § 136(h), and 40 C.F.R. § 152.500(a), to mean any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.
12. Pursuant to 40 C.F.R. § 152.500(b)(2), a device is subject to the requirements set forth in Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. Part 167, with respect to establishment registration and reporting.
13. Pursuant to 40 C.F.R. § 167.3, "pesticidal product" means a pesticide, active ingredient, or device.
14. Pursuant to 40 C.F.R. § 167.20(a)(1), any establishment where a pesticidal product is produced must be registered with the Administrator of the EPA.
15. The term "establishment" is defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), to mean any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.
16. The term "produce" is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), to mean, in part, to

manufacture, prepare, compound, propagate, or process any pesticide or active ingredient used in producing a pesticide. The term “produce” is further defined in 40 C.F.R. § 167.3 to mean 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.

17. The term “producer” is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), to mean the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. The term “producer” is further defined in 40 C.F.R. § 167.3 to mean any person who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling, and relabeling).
18. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for a producer to violate Section 7(a) of the Act.
19. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), no person shall produce any pesticide in any state unless the establishment in which it is produced is registered with the Administrator of the EPA.
20. Section 14(a) of FIFRA, 7 U.S.C. § 136/(a), in conjunction with 40 C.F.R. Part 19, Adjustments of Civil Monetary Penalties for Inflation, authorizes the assessment of a civil penalty for violations of the Act.

IV. FINDINGS OF FACT

21. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
22. On September 29, 2021, an authorized representative of the EPA conducted an inspection at the Industrial Drive Facility to collect information related to Respondent’s compliance with FIFRA.
23. During the course of this inspection, it was discovered that Respondent was producing and distributing a product that was variously referred to as either the Ultra Violet Germicidal Irradiation Sentinel Mobile Filtration Unit or the Ultra Violet Germicidal Irradiation Sentinel Wall Filtration Unit (the Sentinel) out of both the Industrial Drive Facility and the Johnson Road Facility. The inspector photographed the Sentinel and collected the product label affixed thereto, the “Owner’s Manual” that was sold therewith, and the marketing material that was used for its advertisement. The inspector also collected shipping records evidencing sales and distribution of the Sentinel between October 2020, and January 2021.
24. A review of the label and labelling collected during the inspection revealed the following pesticidal claims regarding the Sentinel:
 - (a) The Sentinel is an “Ultraviolet Germicidal Air Cleaning Device;”
 - (b) The Sentinel “reduces the probability of virus spread;” and
 - (c) “[T]he unit[] [is] designed to be operated continuously to filter airborne pathogens.”

25. Further review of the label for the Sentinel showed that it did not display an EPA establishment number.
26. On April 19, 2023, an authorized representative of the EPA conducted a second inspection at the Industrial Drive Facility, during which event the inspector collected additional shipping records for the Sentinel, demonstrating sales and distribution between December 2020, and December 2021.
27. On August 10, 2023, the EPA conducted a third inspection at the Industrial Drive Facility. The inspector photographed the Sentinel label and obtained a statement from a representative of Respondent describing the production of the Sentinel at both the Industrial Drive Facility and the Johnson Road Facility. The inspector also collected a third round of additional shipping records evidencing sales and distribution of the Sentinel between February 2021, and April 2023.
28. Based on the claims identified in Paragraph 24 above that the product is germicidal and reduces and filters viruses and pathogens, the Sentinel is an instrument or contrivance intended to mitigate or destroy pests and is, therefore, a "device" as that term is defined in Section 2(h) of FIFRA, 7 U.S.C. 136(h).
29. After the third inspection, a review of the EPA's list of establishments registered under FIFRA showed that neither the Industrial Drive Facility nor the Johnson Road Facility appears on that list, and there is no record of Respondent ever having submitted documents to the EPA to register either the Industrial Drive Facility or the Johnson Road Facility as required by Section 7(a) of FIFRA and 40 C.F.R. § 167.20(a)(1).

V. ALLEGED VIOLATION

30. The EPA alleges that Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing devices in an establishment that was not registered as required by 40 C.F.R. § 167.20(a)(1) and Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), on one or more occasions as described in Section IV above.

VI. STIPULATIONS

31. The issuance of this CAFO simultaneously commences and concludes this proceeding.
See 40 C.F.R. § 22.13(b).
32. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - (a) admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) consents to the conditions specified in this CAFO;
 - (e) waives any right to contest the alleged violation of law set forth in Section V (Alleged Violation) of this CAFO; and

(f) waives its rights to appeal the Final Order accompanying this CAFO.

33. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of FIFRA and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept or issue this CAFO;
- (f) waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying this Consent Agreement; and
- (g) agrees to comply with the terms of this CAFO.

34. In accordance with 40 C.F.R. § 22.5, the individuals named in the Certificate of Service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

35. Respondent consents to the payment of a civil penalty for the violations alleged herein, which was calculated in accordance with the Act, in the amount of **ONE HUNDRED THIRTY-SEVEN THOUSAND, SEVEN HUNDRED DOLLARS (\$137,700.00)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.
36. Respondent shall pay the civil penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the following EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions, see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. In addition, Respondent shall identify every payment with Respondent's name and the docket number of this

CAFO, **Docket No. FIFRA-04-2024-3024(b)**.

37. Respondent shall send proof of payment, within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov

and

Kimberly Tonkovich
Enforcement and Compliance Assurance Division
Chemical Safety and Land Enforcement Branch
tonkovich.kimberly@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

38. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or Automated Clearing House transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with Respondent's name and **Docket No. FIFRA-04-2024-3024(b)**.
39. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require Respondent to pay the following amounts on any amount overdue:
- (a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within thirty (30) days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (30) days of the Effective Date of this CAFO, interest will continue to accrue on any unpaid portion until the unpaid portion of the penalty and accrued interest is paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b), and 40 C.F.R. § 13.11(a).
 - (b) Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. See 40 C.F.R. § 13.11(c).

- (c) Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average costs incurred. See 31 C.F.R. § 901.9(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

40. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- (a) refer the debt to a credit reporting agency or a collection agency pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136/(a) (see 40 C.F.R. §§ 13.13 and 13.14);
- (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H);
- (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (see 40 C.F.R. § 13.17); and/or
- (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136/(a)(5).

41. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send a completed Form 1098-F ("Fines, Penalties, and Other Amounts") to the Internal Revenue Service (IRS) annually with respect to any court order and settlement agreement (including administrative settlements), that requires a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (for example, a copy of Form 1098-F). In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:

- (a) Respondent shall complete a Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- (b) Respondent shall therein certify that its completed Form W-9 includes Respondent's correct Tax Identification Number (TIN) or that Respondent has applied and is waiting for issuance of a TIN;
- (c) Respondent shall email its completed Form W-9 to the EPA Region 4's Cincinnati Finance Center contact, Jessica Henderson (henderson.jessica@epa.gov), on or before the date that Respondent's initial penalty payment is due, pursuant to Paragraph 35 of this CAFO, and the EPA recommends encrypting Form W-9 email correspondence; and

(d) In the event that Respondent has certified in its completed Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent by the date that its initial penalty payment is due, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

- i. notify EPA's Cincinnati Finance Center of this fact, via email, by the date that Respondent's initial penalty payment is due; and
- ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

(e) Failure to comply with providing Form W-9 or Respondent's TIN may subject Respondent to a penalty. *See* 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1.

42. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

43. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

44. In accordance with 40 C.F.R. § 22.18(c), full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall satisfy the requirements of this CAFO; but shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

45. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 14(a) of the Act, 7 U.S.C. § 136/(a), as well as criminal sanctions as provided in Section 14(b) of the Act, 7 U.S.C. § 136/(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

46. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

47. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent hazard as provided under the Act.

48. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

49. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized

representatives to comply with the provisions of this CAFO.


50. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Industrial Drive Facility and/or the Johnson Road Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
51. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
52. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
53. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
54. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
55. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
56. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
57. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

58. This CAFO shall become effective upon execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of **Halton Company**, Docket Number **FIFRA-04-2024-3024(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:


Signature _____ Date 12/17/24

Printed Name: Phil Meredith

Title: President Halton America

Address: 103 Industrial Drive
Scottsville Ky 42164

The foregoing Consent Agreement In the Matter of **Halton Company**, Docket **FIFRA-04-2024-3024(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Keriema S. Newman
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Halton Company,

Respondent.

Docket No. **FIFRA-04-2024-3024(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, In the Matter of **Halton Company**, Docket No. **FIFRA-04-2024-3024(b)**, were filed and copies of the same were emailed to the Parties as indicated below.

Via email to all Parties at the following email addresses:

To Respondent: Sarah P. Jarboe
Partner
English, Lucas, Priest & Owsley, LLP
sjarboe@elpolaw.com
(270) 781-6500

Jimmy Sandusky
Halton Company
jimmy.sandusky@halton.com
(270) 239-6380

To EPA: Kimberly Tonkovich
Life Scientist
tonkovich.kimberly@epa.gov
(404) 562-8987

Kate Forrest
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forrest.kate@epa.gov
(404) 562-9507

Robert Caplan
Senior Attorney
caplan.robert@epa.gov
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Regional Hearing Clerk
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