

U. S. ENVIRONMENTAL PROTECTION AGENCY 2019 AUG 15 AM 10: 16
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
ITW Pro Brands,) Docket No. FIFRA-07-2019-0218
a division of Illinois Tool Works, Inc.,)
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency Region 7 (EPA or Complainant), and ITW Pro Brands, a division of Illinois Tool Works, Inc. (Respondent) have agreed to a settlement of this action before the filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 7.
4. The Respondent is ITW Pro Brands, a division of Illinois Tool Works, Inc., a business operating in the state of Kansas.

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et seq.*
6. Section 12(a)(1)(B) of FIFRA, Section 7 U.S.C. § 136j(a)(1)(B), states, in pertinent part, that it shall be unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 136a of this title.
7. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.
8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” 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-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).
9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
11. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” to mean 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.
12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading in any particular.
13. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act 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.
14. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 for each offense. The Debt Collection Improvement Act of 1996, 31 U.S.C.

§ 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$7,500 for violations that occurred before November 2, 2015, and to \$19,446 for violations that occur after November 2, 2015, and are assessed after February 6, 2019.

General Factual Allegations

15. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA.

16. On or about February 28, 2018, a Kansas Department of Agriculture inspector conducted a neutral scheme producer establishment inspection at Respondent’s facility located at 805 E. Old 56 Highway, Olathe, Kansas.

17. During the inspection, labels from three pesticide products were collected.

18. Specifically, the inspector collected a representative label for Scrubs Insect Shield Insect Repellent Wipes bearing the EPA Registration Number (EPA Reg. No.) 11694-111.

19. Invoices and photographs regarding the sale and distribution of Scrubs Insect Shield Insect Repellent Wipes were also collected.

Allegations of Violations

20. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

21. The facts stated in Paragraphs 15 through 19 above are herein incorporated.

22. Pursuant to Section 12(a)(1)(B) of FIFRA, Section 7 U.S.C. § 136j(a)(1)(B), it shall be unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 136a of this title.

23. The label for the Scrubs Insect Shield Insect Repellent Wipes collected during the inspection included a link to the ITW Pro Brands website with instructions to refer to document #91401.

24. EPA accessed Respondent’s webpage on July 24, 2018, and observed the following claim associated with the Scrubs Insect Shield Insect Repellent Wipes, “Provides Protection from the insects that carry the West Nile Virus.”

25. The accepted label for Scrubs Insect Shield Insect Repellent Wipes does not include claims associated with the efficacy of this product on the West Nile Virus.

26. Respondent was offering for sale or distribution on its website the registered pesticide, Scrubs Insect Shield Insect Repellent Wipes, with a claim not included on the accepted label.

27. Respondent violated Section 12(a)(1)(B) of FIFRA, Section 7 U.S.C. § 136j(a)(1)(B), by offering for sale or distribution a registered pesticide which included claims made for it as a part of its distribution or sale which substantially differ from the claims made for it as a part of the statement required in connection with its registration under section 136a of this title.

Count 2

28. The facts stated in Paragraphs 15 through 19 above are herein incorporated.

29. Pursuant to Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

30. The inspector collected a representative label for the Scrubs Insect Shield Insect Repellent Wipes which was sold on or about December 13, 2017.

31. The collected label included reference to several target species, including "Flies."

32. On or about December 13, 2017, Respondent sold or distributed a quantity of the pesticide product Scrubs Insect Shield Insect Repellent Wipes which included the target species "Flies."

33. On July 24, 2018, EPA accessed Respondent's webpage and observed that the information on the website included the target species "Flies" associated with the Scrubs Insect Shield Insect Repellent Wipes.

34. "Flies" is not a target species included on the accepted label of Scrubs Insect Shield Insect Repellent Wipes.

35. The target species on the accepted label for Scrubs Insect Shield Insect Repellent Wipes include biting flies, deer flies, black flies, stable flies, and sand flies.

36. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide whose label was misbranded in that it bore a statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

CONSENT AGREEMENT

37. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),
Respondent:

- (a) Admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

38. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

39. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

40. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of Eleven Thousand Seven Hundred Forty-Nine Dollars (\$11,749), as set forth below.

41. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

42. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

43. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

44. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

45. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

46. Respondent certifies by signing this CAFO that, to the best of its knowledge, it is presently in compliance with FIFRA and its implementing regulations promulgated thereunder with respect to the matters alleged herein.

47. Full payment of the penalty proposed in this Consent Agreement 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 law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

48. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

49. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

50. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

51. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

52. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns.

RESPONDENT

ITW Pro Brands, a division of Illinois Tool Works, Inc.

Date: July 30, 2019

By: 

Lee Rieth
Print Name

Director of R&D, ITW Pro Brands
Title


COMPLAINANT

U.S. Environmental Protection Agency

Date: 8/12/19


DeAndré Singletary
Acting Director
Enforcement and Compliance Assurance Division

Date: 8/12/19


Kelley Catlin
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 14(a) of 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, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), 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.

IT IS SO ORDERED.

Karina Borrromeo
Karina Borrromeo
Regional Judicial Officer

Aug. 15, 2019
Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

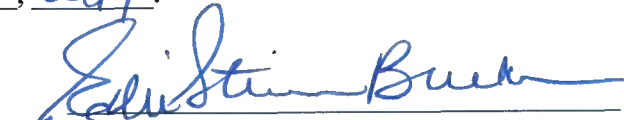
Copy via Email to Complainant:

Kelley Catlin.

Copy via Email to Respondent:

Kathryn Larkins, Esq.

Dated this 15th day of August, 2019.


for Signed Lisa Hanger
Region 7 Hearing Clerk