

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103**



In the Matter of: :
:
ESC Brands, LLC. : **U.S. EPA Docket No. FIFRA-03-2024-0055**
1060 Blue Prince Road :
Bluefield, WV 24701 : **Proceeding under Section 14(a) of the Federal**
: **Insecticide, Fungicide and Rodenticide Act,**
Respondent. : **7 U.S.C. § 136/(a)**
:
:
Facility. :

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”) and ESC Brands, LLC (“Respondent”) (collectively the “Parties”), pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 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. Part 22. Section 14(a) of FIFRA, 7 U.S.C. § 136/(a), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under FIFRA for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(1).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. 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.
13. At all times relevant to the violations alleged herein, Respondent was a corporation registered in the State of West Virginia with a principal place of business located at 1060 Blue Prince Road in Bluefield, West Virginia.
14. At all times relevant to the violations alleged herein, Respondent was a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
15. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

16. Pursuant to 40 C.F.R. §§ 152.15(a)(1), the regulations implementing FIFRA give further guidance on what constitutes a pesticidal purpose, stating that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if, among other things, the person who distributes or sells the substance “claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a pesticide.”
17. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “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 (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under [Section 25(c)(1)].”
18. Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), defines an “antimicrobial pesticide” as “(i) a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or (ii) protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.”
19. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to 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.” *See also* 40 C.F.R. § 152.3.
20. On February 23, 2023, and August 17, 2023, the EPA issued information request letters (“IRLs”) to Respondent.
21. Respondent’s responses to the IRLs and the EPA’s related investigatory activities show that at all times relevant the violations alleged herein, Respondent distributed or sold the following two (2) EPA registered antimicrobial pesticide products:
 - a. *MY-SHIELD® HOSPITAL DISINFECTANT* (EPA Reg. No. 94196-3); and
 - b. *MY-SHIELD® BROAD SPECTRUM DISINFECTANT* (EPA Reg. No. 94196-4).
22. Respondent’s responses to the IRLs and the EPA’s related investigatory activities show that at all times relevant the violations alleged herein, Respondent distributed or sold the product *MY-SHIELD® LAUNDRY COMPLETE* with labels that include the statement “For Sanitizing, Deodorizing, and Softening all Fabrics During the Washing Machine Process.”
23. The statement “For Sanitizing, Deodorizing, and Softening all Fabrics During the Washing Machine Process” makes clear that *MY-SHIELD® LAUNDRY COMPLETE* was intended for pesticidal purpose and therefore an antimicrobial pesticide requiring registration.
24. Respondent’s responses to the IRLs and the EPA’s related investigatory activities show that at all times relevant the violations alleged herein, Respondent distributed or sold the following two (2) products with labels that included the statement “Protects from Harmful Bacteria, Mold and Fungus.”

- a. *MY-SHIELD® SURFACE CLEANER*; and
- b. *MY-SHIELD® HOSPITAL GRADE CLEANER*.

- 25. The statement “Protects from Harmful Bacteria, Mold and Fungus” made clear that both *MY-SHIELD® SURFACE CLEANER* and *MY-SHIELD® HOSPITAL GRADE CLEANER* were intended for pesticidal purpose and therefore each product was an antimicrobial pesticide requiring registration.
- 26. Section 14(a)(l) of FIFRA, 7 U.S.C. § 136/(a)(l), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by the EPA of not more than \$5,000 for each offense. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and the Civil Monetary Penalty Inflation Adjustment Rule promulgated at 40 C.F.R. Part 19, violations of FIFRA which occur or occurred after November 2, 2015 and where penalties are assessed on or after January 6, 2023 are subject to a statutory maximum penalty of \$23,494 per violation. 88 Fed. Reg. 986, 988 (January 6, 2023).
- 27. At all times relevant to the violations alleged herein, Respondent was a “wholesaler, dealer, retailer, or other distributor” within the meaning of, and subject to the assessment of a civil penalty under, Section 14(a)(1) of FIFRA, 7 U.S.C. § 136/(a)(1), for any violation of FIFRA.

Count I

Distributing or Selling Pesticides with Compositions that Differ or that are Misbranded

- 28. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 29. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), makes it unlawful for any person in any State to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA.
- 30. Pursuant to Sections 2(q)(1)(A) and (E) of FIFRA, 7 U.S.C. §§136(q)(1)(A) and (E), a pesticide is “misbranded” if, *inter alia*, “its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular” or if “any word, statement, or other information required by or under the authority of [FIFRA] is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.”
- 31. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is misbranded.

32. *MY-SHIELD*[®] *HOSPITAL DISINFECTANT* (EPA Reg. No. 94196-3) was first registered with the EPA under Section 3 of FIFRA on July 2, 2021. An amended label for this product was accepted by the EPA under Section 3 of FIFRA on August 10, 2021.
33. Consistent with the confidential statement of formula Respondent submitted as part of its application for registration for *MY-SHIELD*[®] *HOSPITAL DISINFECTANT* (EPA Reg. No. 94196-3), both the July 2, 2021, and August 10, 2021, EPA accepted labels state the concentration of the active ingredient “(3-Trimethoxysilyl) propyl dimethyloctadecyl ammonium chloride” to be 0.7920%.
34. Respondent’s responses to the IRLs and the EPA’s related investigatory activities show that on at least 32 occasions in 2022 Respondent distributed or sold *MY-SHIELD*[®] *HOSPITAL DISINFECTANT* (EPA Reg. No. 94196-3) with labels that state the concentration of the active ingredient “(3-Trimethoxysilyl) propyl dimethyloctadecyl ammonium chloride” to be 1.5840%.
35. By selling *MY-SHIELD*[®] *HOSPITAL DISINFECTANT* (EPA Reg. No. 94196-3) either with a composition that differs from the composition described as part of its registration under Section 3 of FIFRA, or with a label that is false or misleading as to the concentration of the active ingredient “(3-Trimethoxysilyl) propyl dimethyloctadecyl ammonium chloride”, Respondent committed unlawful acts under Section 12(a)(1)(C) of FIFRA, 7 U.S.C § 136j(a)(1)(C), or alternatively, of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
36. *MY-SHIELD*[®] *BROAD SPECTRUM DISINFECTANT* (EPA Reg. No. 94196-4) was first registered with the EPA under Section 3 of FIFRA on July 2, 2021. An amended label for this product was accepted by the EPA under Section 3 of FIFRA on August 10, 2021.
37. Respondent’s responses to the IRLs and the EPA’s related investigatory activities show that Respondent distributed or sold *MY-SHIELD*[®] *HOSPITAL DISINFECTANT* (EPA Reg. No. 94196-3) on at least 32 occasions in 2022 and *MY-SHIELD*[®] *BROAD SPECTRUM DISINFECTANT* (EPA Reg. No. 94196-4) on at least 45 occasions in 2022 with labels that did not include required information from the initial and amended EPA accepted labels for these pesticides including:
- “Keep out of reach of Children”;
 - In the “First Aid” Section, subheading, “If swallowed”, the sentence, “Call a poison control center or doctor immediately for treatment advice”;
 - In the “First Aid” section, subheading, “If in Eyes” the statement, “Immediately flush with plenty of water for up to 15 minutes”;
 - In the “Environmental Hazards” section, subheading, “Commercial and Industrial Uses”, the sentence, “For guidance, contact your State Water Board or Regional Office of the EPA”;
 - The entire “Storage and Disposal” section;
 - In the “Directions for Use” section, the statement, “It is a violation of Federal law to use this product in a manner inconsistent with its labeling.”; and

- In the “Public Health Use, Locations & Claims on Hard Non-Porous Surfaces” section, the statement, "This product is not to be used as a terminal sterilant/high level disinfectant on any surface or instrument that (1) is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body, or (2) contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. This product may be used to preclean or decontaminate critical or semi-critical medical devices prior to sterilization or high-level disinfection”.
38. By distributing or selling *MY-SHIELD® HOSPITAL DISINFECTANT* (EPA Reg. No. 94196-3) and *MY-SHIELD® BROAD SPECTRUM DISINFECTANT* (EPA Reg. No. 94196-4) with labels that do not include words, statements, or other information required by or under the authority of FIFRA, Respondent committed unlawful acts under Section 12(a)(1)(E) of FIFRA, 7 U.S.C § 136j(a)(1)(E).
39. Each occasion that Respondent distributed or sold *MY-SHIELD® HOSPITAL DISINFECTANT* (EPA Reg. No. 94196-3) or *MY-SHIELD® BROAD SPECTRUM DISINFECTANT* (EPA Reg. No. 94196-4) constitutes a separate unlawful act (or separate unlawful acts) for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136i(a).

Count II
Distributing or Selling Unregistered Pesticides

40. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
41. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
42. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 provide, in pertinent part, that no person may distribute or sell any pesticide product that is not registered under FIFRA.
43. At all times relevant to the violations alleged herein, the pesticides *MY-SHIELD® LAUNDRY COMPLETE*, *MY-SHIELD® SURFACE CLEANER*, and *MY-SHIELD® HOSPITAL GRADE CLEANER* were not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, nor had they ever been so registered.
44. Respondent’s responses to the IRLs and the EPA’s related investigatory activities show that Respondent distributed or sold: *MY-SHIELD® LAUNDRY COMPLETE* on at least fifty-one (51) occasions from January 1, 2022, through September 21, 2023, *MY-SHIELD® SURFACE CLEANER* on at least two (2) occasions from January 1, 2022, through September 21, 2023, and *MY-SHIELD® HOSPITAL GRADE CLEANER* on at least one (1) occasion prior to September 21, 2023.

45. By distributing or selling the unregistered pesticides *MY-SHIELD® LAUNDRY COMPLETE*, *MY-SHIELD® SURFACE CLEANER*, and *MY-SHIELD® HOSPITAL GRADE CLEANER*, Respondent committed unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C § 136j(a)(1)(A).
46. Each occasion that Respondent distributed or sold *MY-SHIELD® LAUNDRY COMPLETE*, *MY-SHIELD® SURFACE CLEANER* or *MY-SHIELD® HOSPITAL GRADE CLEANER* constitutes a separate unlawful act for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

CIVIL PENALTY

47. In settlement of the EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **ONE THOUSAND DOLLARS (\$1,000)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
48. The civil penalty is based upon the EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), including, the following: the size of the business of the person charged, the effect of the person's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to the EPA's *FIFRA Enforcement Response Policy* (December 2009) which reflects the statutory penalty criteria and factors set forth Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing the EPA's civil penalty policies to account for inflation.
49. The civil penalty is also based upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to the EPA by Respondent including the following: federal tax returns from 2018 through 2022, a 2023 payroll summary, insurance product sales audits for 2021-2023, as well as other information on November 21, 2023.
50. Based upon this analysis, the EPA has determined that the Respondent is unable to pay a civil penalty in excess of the dollar amount set forth in Paragraph 47, above, in settlement of the above-captioned action.
51. Respondent agrees that, within 30 days of the effective date of this Consent Agreement and Final Order, Respondent shall make a payment of **\$1,000** to "**United States Treasury**" with the case name, address and docket number of this Consent Agreement and Final Order (EPA Docket No. FIFRA-03-2024-0055), for the amount specified above. Respondent shall pay the assessed penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:
<https://www.epa.gov/financial/makepayment>. For additional instructions see:
<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

52. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Jennifer M. Abramson
Senior Assistant Regional Counsel
abramson.jennifer@epa.gov

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

53. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
54. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed the EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
55. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. However, the EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
56. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, the EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
57. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90)

calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

- 58. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
- 59. The parties consent to service of the Final Order by e-mail at the following valid email addresses: abramson.jennifer@epa.gov (for Complainant), and bsmyth@escbrands.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

- 60. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
- 61. Respondent certifies that any information or representation it has supplied or made to the EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

- 62. Respondent certifies to the EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

- 63. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, 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 the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of FIFRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

64. This Consent Agreement and Final Order resolves only the EPA’s claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. The EPA reserves the right to commence action against any person, including Respondent, in response to any condition which the EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). The EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

65. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

66. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region 3, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

67. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: ESC Brands, LLC

Date: Jan 11, 2024



By: _____
Bruce Smyth, Chief Executive Officer
ESC Brands, LLC

For the Complainant:

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

By: _____
[Digital Signature and Date]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region 3
Complainant

Attorney for Complainant:

By: _____
[Digital Signature and Date]
Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of: :
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ESC Brands, LLC. : U.S. EPA Docket No. FIFRA-03-2024-0055
1060 Blue Prince Road :
Bluefield, WV 24701 : Proceeding under Section 14(a) of the Federal
Respondent. : Insecticide, Fungicide and Rodenticide Act,
: 7 U.S.C. § 136l(a)
: :
Facility. :

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, ESC Brands, LLC, have executed a document entitled "Consent 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 Consent 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 Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *FIFRA enforcement Response Policy (December 2009)*, and the statutory factors set forth in Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a)(4).

NOW, THEREFORE, PURSUANT TO Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(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 **ONE THOUSAND DOLLARS (\$1,000)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent 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 Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____

By: _____

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

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Bluefield, WV 24701	: Proceeding under Section 14(a) of the Federal
	: Insecticide, Fungicide and Rodenticide Act,
Respondent.	: 7 U.S.C. § 136l(a)
	:
	:
Facility.	:

CERTIFICATE OF SERVICE

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent 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 via email:

Bruce Smyth
ESC Brands, LLC
bsmyth@escbrands.com
1060 Blue Prince Road
Bluefield, West Virginia 24701
Phone: (888) 331-8332

Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA, Region 3
abramson.Jennifer@epa.gov

Craig Yussen
Chemical Engineer/Enforcement Officer
U.S. EPA, Region 3
yussen.Craig@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3