

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR**

Received by
EPA Region 7
Hearing Clerk

In the Matter of)
)
Millenia Products, LLC d/b/a)
La Palm Spa Products) **Docket No. FIFRA-07-2023-0101**
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Millenia Products, LLC d/b/a La Palm Spa Products (“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 initiated pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136f and in accordance with the Consolidated Rules of Practice.
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 of Region 7 is the Director of the Enforcement and Compliance Assurance Division, Region 7.
4. The Respondent is Millenia Products, LLC d/b/a La Palm Spa Products, an LLC that is registered under the laws of the state of Kansas. Respondent has its headquarters in the state of Kansas.

Statutory and Regulatory Background

5. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell “any pesticide that is not registered” under Section 3 of FIFRA, 7 U.S.C. § 136a, or “whose registration has been canceled or suspended....”

6. 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.”

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

8. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to include “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

9. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “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 animal) which the Administrator declares to be a pest” under Section 25(c)(1).

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

11. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines “registrant” to mean “a person who has registered any pesticide pursuant to the provisions of this subchapter.”

12. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines “establishment” 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.”

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

14. 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 (as compared with other words, statements, designs, or graphic matter in the labeling) 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.

15. Section 2 (q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded “if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, is adequate to protect health and the environment.”

16. 40 C.F.R. § 156.10(a)(1)(viii), states every pesticide product shall bear a label containing “[t]he directions for use as prescribed in paragraph (i) of this section.” The contents of a label “may appear on any portion of the label provided they are conspicuous enough to be easily read by the user of the pesticide product”. 40 C.F.R. § 156.10 (i).

17. Section 2 (q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if “the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 136a(d) of this title, is adequate to protect health and the environment.”

18. 40 C.F.R. § 156.64(a)(1), states any pesticide product meeting the criteria of Toxicity Category I for any route of exposure must bear on the front panel the signal word “DANGER.”

19. 40 C.F.R. § 156.10(a)(1) states every pesticide product shall “bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently the following: ... (vii) Hazard and precautionary statements as prescribed in subpart D of this part for human and domestic animal hazards....”

20. 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 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 \$23,494, for violations that occur after November 2, 2015, and for which penalties are assessed after January 6, 2023.

General Factual Allegations

21. The Respondent is and was at all times referred to in this Complaint, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. At all times relevant to this action, Respondent owned and operated the EPA registered establishment, EPA Establishment Number 73694-KS-001, at 3819 North Toben Street, Wichita, Kansas.

23. Between March and November 2020, Respondent sold and/or distributed the unregistered pesticide “Hospital Disinfectant.” “Hospital Disinfectant” is a “pesticide” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. Respondent sold and/or distributed “Hospital Disinfectant” with another company’s pesticide product registration number on the product. The number used by the

Respondent was registered to another entity. Respondent did not have a supplemental distribution agreement with that other entity that allowed Respondent to use that other entity's registration number.

25. "Hospital Disinfectant" was labeled, as defined in 7 U.S.C. § 136(p), by Millenia. The label on "Hospital Disinfectant" failed to include all required directions and instructions.

26. On April 2, 2021, the EPA sent an "Advisory Letter" to Respondent. In response, Respondent indicated that it would stop selling the Hospital Disinfectant. On May 21, 2021, the EPA confirmed "the products in question have been removed from the website."

27. On March 9, 2022, EPA Region 7 was contacted by EPA Region 9 regarding "Hospital Disinfectant." Images of the product labeling language stated the following pesticidal claims: "Disinfectant," "Sanitizer," "Fungicide," and "Kills Virus." The product also had EPA registration numbers EPA Reg No. 1839-86-73694 and EPA Est No. 73694-KS-001.

28. On March 30, 2022, a Kansas State Department of Agriculture inspector and EPA conducted a for-cause inspection of Respondent's registered pesticide producing establishment at 3819 North Toben Street, Wichita, Kansas.

29. On or about April 25, 2022, EPA Region 7 was contacted by EPA Region 9 regarding the sale of "Hospital Disinfectant" from Respondent to another supply company. EPA Region 9 provided EPA Region 7 with pictures of the label of "Hospital Disinfectant" and an invoice for the sale of "Hospital Disinfectant" from Respondent to another supply company on November 10, 2020. These sales occurred in March, April, and November 2020.

Allegations of Violations

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

Distribution or Sale of an Unregistered Pesticide

31. The facts stated in Paragraphs 21 through 29 above are herein incorporated.

32. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to "distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended."

33. Pursuant to 40 C.F.R. § 152.15(a)(1) states that "no person may distribute or sell any pesticide product that is not registered under the Act...A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide."

34. "Hospital Disinfectant" was an unregistered pesticide when it was sold by Respondent. "Hospital Disinfectant" has no record of being registered by Respondent or being registered through a supplemental distribution agreement with another company.

35. On the dates of the sales and/or distributions of the pesticide the product sold as "Hospital Disinfectant," it was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a as was required under Section 12(a)(1)(A) of FIFRA.

Distribution or Sale of a Misbranded Pesticide

36. The facts stated in Paragraphs 21 through 29 above are herein incorporated.

37. 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."

Directions for Use

38. The label for "Hospital Disinfectant" failed to include all required directions for use as was required by 7 U.S.C. § 136j(a)(1)(E), 7 U.S.C. § 136(q)(1)(F), and 40 C.F.R. § 156.10(a)(1)(viii).

Signal Word

39. The label for "Hospital Disinfectant" did not include the word "DANGER" on the product when it was sold and/or distributed as was required by 7 U.S.C. § 136j(a)(1)(E), 7 U.S.C. § 136(q)(1)(G), and 40 C.F.R. § 156.64(a)(1).

First Aid Instructions

50. The label for "Hospital Disinfectant" did not have any instructions relating to its inhalation when it was sold and/or distributed as required by 7 U.S.C. § 136j(a)(1)(E), 7 U.S.C. § 136(q)(1)(G), and 40 C.F.R. § 156.10(a)(1)(vii).

CONSENT AGREEMENT

51. 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 or legal conclusions stated herein;
- (c) Only consents to the assessment of a civil penalty, as stated herein in order to settle this matter;

- (d) consents to any conditions specified herein;
- (e) waives any right to contest the allegations set forth herein; and
- (f) waives its rights to appeal the Final Order accompanying this Consent Agreement.

52. 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.

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

54. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

55. By signing this Consent Agreement and Final Order Respondent is certifying that the Respondent no longer sells the product "Hospital Disinfectant"

56. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: *michael@lapalmproduct.com*.

Penalty Payment

57. Respondent agrees that, in settlement of the claims alleged herein and without admitting any wrongdoing, Respondent shall pay a civil penalty of One Hundred and Eighteen Thousand Four Hundred and Eighty-Three dollars (\$118,483) as set forth below.

58. 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
PO Box 979078
St. Louis, Missouri 63197-9000

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

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

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov

Adam Hilbert, Regional Counsel
Hilbert.adam@epa.gov

60. 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

61. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties resulting from, arising from, or relating to the factual allegations and FIFRA 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 that do not arise from the factual allegations contained herein.

62. 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.

63. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

64. 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 that does not result or arise from, or relate to the factual allegations described herein 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.

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

66. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

67. 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.

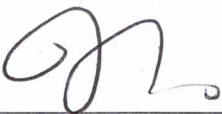
68. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional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

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

70. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT
Millenia Products, LLC

Date: 4/21/23

By: 

Michael L
Print Name

Owner
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

David Cozad
Director
Enforcement and Compliance Assurance Division

Adam Hilbert
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 Borromeo
Regional Judicial Officer

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:

Adam Hilbert
Regional Counsel
Hilbert.adam@epa.gov

Copy via Email to Respondent:

Millenia Products, LLC
legal@lapalmproduct.com

Benjamin L. Tompkins
Kennyhertz Perry, LLC
Attorney for Respondent
Ben@kennyhertzperry.com

Dated this _____ day of _____, _____.

Signed