

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

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

3.2. 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.”

3.3. The term “active ingredient” is defined at Section 2(a) of FIFRA, 7 U.S.C. § 136(a), to mean “an ingredient which will prevent, destroy, repel, or mitigate any pest.”

3.4. The regulation at 40 C.F.R. § 152.15 states that “a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if: (a) the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide; . . . (b) the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purpose (by itself or in combination with any other substances), [or] use for manufacture of a pesticide; . . . or (c) the person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.”

3.5. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” This section also defines “labeling” as “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.”

3.6. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines “producer” as “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.” The regulation at 40 C.F.R. § 167.3 further defines “producer” as “any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling, and relabeling).”

3.7. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines “produce” as “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in

producing a pesticide.” The regulation at 40 C.F.R. § 167.3 further defines “produce” as “to package, repack, label, relabel, or otherwise change the container of any pesticide or device.”

3.8. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines “establishment” as “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”

3.9. 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.”

3.10. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

3.11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it shall be unlawful for any person in any State to sell or distribute to any person any pesticide that is not registered under Section 3 of FIFRA.

3.12. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that “No person shall produce any pesticide subject to [FIFRA] or active ingredient used in producing a pesticide subject to [FIFRA] in any State unless the establishment in which it is produced is registered with the Administrator.”

3.13. The regulation at 40 C.F.R. § 167.20(a)(1) requires that “Any establishment where a pesticidal product is produced must be registered with the Agency.”

3.14. Section 12(a)(2)(L), 7 U.S.C. § 136j(a)(1)(A), provides that “it shall be unlawful for any person who is a producer to violate any of the provisions of [Section 7 of FIFRA].”

3.15. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), provides that “[t]he Administrator may prescribe regulations requiring producers, registrants, and applicants for registration to maintain such records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of [FIFRA].”

3.16. The regulation at 40 C.F.R. § 169.2(a) requires that all producers of pesticides maintain records showing the product name, EPA Registration number, Experimental Permit Number if the pesticide is produced under an Experimental Use Permit, amounts per batch, and batch identification of all pesticides produced. In cases where the product is a pesticide, which is not registered, is not the subject of an application for registration, or is not produced under an Experimental Use Permit, the records shall also show the complete formula.

3.17. The regulation at 40 C.F.R. § 169.2(d) requires that all producers of pesticides maintain records showing the following information regarding the shipment of all pesticides: brand name of pesticide, or the common or chemical name of the pesticide active ingredient; the name and address of consignee; name of originating carrier; date shipped or delivered for shipment; and quantities shipped or delivered for shipment.

3.18. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), provides that it shall be unlawful for any person to refuse to prepare, maintain, or submit any records required by or under Section 8 of FIFRA, 7 U.S.C. § 136f.

3.19. Respondent is a corporation incorporated in the State of California and authorized to do business in the State of Idaho. Respondent is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

COUNT 1

3.20. Between at least November 26, 2014, and March 1, 2015, Respondent mixed the registered pesticide “ProOxine” with citric acid and water, packaged the mixture, and labeled the mixture under the name “Smartblock” on at least one occasion.

3.21. Respondent’s Smartblock label states that Smartblock is a “Sanitizer Disinfectant” that is “Fungicidal-Bactericidal-Vericidal.”

3.22. Smartblock is a pesticide as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.23. Between at least November 26, 2014, and March 1, 2015, Respondent sold and distributed Smartblock to a person on at least one occasion.

3.24. The mixture of ProOxine, citric acid, and water that Respondent labeled and distributed as Smartblock was not registered under Section 3 of FIFRA at any time between at least November 26, 2014, and March 1, 2015.

3.25. Therefore, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling and distributing the unregistered pesticide Smartblock to a person on at least one occasion between at least November 26, 2014, and March 1, 2015.

COUNT 2

3.26. Between at least November 26, 2014, and March 1, 2015, Respondent owned and operated an establishment located at 1186 East 990 South, Eden, Idaho (“the Establishment”).

3.27. At no time between at least November 26, 2014, and March 1, 2015, did Respondent register the Establishment with the EPA Administrator.

3.28. Between at least November 26, 2014, and March 1, 2015, Respondent on multiple occasions transported the registered pesticide ProOxine to a customer's facility, mixed ProOxine with citric acid and water, packaged the mixture in the customer's container, and placed a Smartblock label on the mixture.

3.29. Therefore, between at least November 26, 2014, and March 1, 2015, Respondent produced the pesticide product Smartblock on at least one occasion at a facility that is not registered with the EPA Administrator.

3.30. At no time between at least November 26, 2014, and March 1, 2015, did Respondent prepare Smartblock to the order of the customer, nor did Respondent deliver Smartblock to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture.

3.31. Therefore, Respondent is not a "custom blender" as defined by 40 C.F.R. § 167.3.

3.32. Therefore, Respondent violated Section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L), on at least one occasion by producing a pesticide subject to FIFRA and failing to produce it in a registered establishment, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20(a)(1).

COUNT 3

3.33. Between at least November 26, 2014, and March 1, 2015, Respondent produced the pesticide Smartblock on at least one occasion.

3.34. Respondent did not maintain records for a period of two years showing the product name, complete formula of the product, amounts per batch, and batch identification of all Smartblock produced, as required by 40 C.F.R. § 169.2(a).

3.35. Respondent therefore violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), by failing to keep records regarding production of Smartblock as required by Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), and 40 C.F.R. § 169.2(a).

COUNT 4

3.36. Between at least November 26, 2014, and March 1, 2015, Respondent produced the pesticide Smartblock on at least one occasion.

3.37. Respondent did not maintain records for a period of two years showing the brand name of the pesticide, or the common or chemical name of the pesticide active ingredient; the name and address of consignee; name of originating carrier; date shipped or delivered for shipment; and quantities shipped or delivered for shipment, regarding the shipment of all Smartblock, as required by 40 C.F.R. § 169.2(d).

3.38. Respondent therefore violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), by failing to keep records regarding shipments of Smartblock as required by Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), and 40 C.F.R. § 169.2(d).

ENFORCEMENT AUTHORITY

3.39. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense that occurs after January 12, 2009 and before November 2, 2015.

IV. TERMS OF SETTLEMENT

- 4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.
- 4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136/(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violations. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$11,200 (the "Assessed Penalty").
- 4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.
- 4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
young.teresa@epa.gov

Derrick Terada
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
terada.derrick@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

6 JUNE 2017

FOR RESPONDENT:

Mark Kane-Berman

MARK KANE-BERMAN, Chief Executive Officer
Microbasics, Inc.

DATED:

6/9/2017

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2017-0134
MICROBASICS, INC.,)	
)	FINAL ORDER
)	
Eden, Idaho,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 12th day of June, 2017.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: MicroBasics, Inc., Docket No.: FIFRA-10-2017-0134**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Danielle Meinhardt
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mark Kane-Berman
Chief Executive Officer
MicroBasics, Inc.
11590 W. Bernardo Court, Suite 110
San Diego, California 92127

DATED this 12th day of June, 2017.


TERESA YOUNG
Regional Hearing Clerk
EPA Region 10