

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of

CBD American Shaman, LLC,

Respondent.

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Docket No. FIFRA-07-2022-0142

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

COMPLAINT

**Section I
Jurisdiction**

1. This Complaint and Notice of Opportunity for Hearing (Complaint) serves as notice that the United States Environmental Protection Agency (EPA), Region 7 has reason to believe that CBD American Shaman, LLC has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

2. This 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, and in accordance with the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, a copy of which is enclosed along with this Complaint.

**Section II
Parties**

3. The 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 CBD American Shaman, LLC, a business in good standing under the laws of the state of Missouri and doing business in the states of Missouri and Kansas.

**Section III
Statutory & Regulatory Background**

5. Congress enacted FIFRA in 1947 and later amended it in 1972. 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)(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.
7. 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.
8. 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.
9. 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 animal) which the Administrator declares to be a pest under Section 25(c)(1).
10. Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), defines the term “antimicrobial pesticide” to mean a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth of microbiological organisms, or 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.
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 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 \$21,805, for violations that occur after November 2, 2015, and for which penalties are assessed between January 12, 2022, and January 6, 2023.

Section IV **General Factual Allegations**

13. 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).
14. On or about June 16, 2021, the EPA conducted an inspection (“store inspection”) at Respondent’s facility located at 6933 W. 75th Street, Overland Park, KS.

15. On or about June 17, 2021, the EPA conducted an inspection (“headquarters inspection”) at Respondent’s facility located at 2405 Southwest Boulevard, Kansas City, MO.

16. At the store inspection, the EPA found the following products were being distributed, sold, and offered for sale:

- a. Shaman Cleansing Wash (2 oz),
- b. Shaman Cleansing Wash (4 oz),
- c. Shaman Cleansing Wash (32 oz), and
- d. Shaman Cleansing Wash (1 gal).

17. At the headquarters inspection, the EPA found the following products were being distributed, sold, and offered for sale:

- a. Shaman Cleansing Wash (4 oz),
- b. Shaman Cleansing Wash (32 oz),
- c. Shaman Cleansing Wash (1 gal),
- d. Shaman Cleansing Gel (8 oz), and
- e. Shaman Cleansing Gel (1 gal).

18. Each of the products described in paragraphs 16 and 17 contain the following on their labels: “Apply to cleanse any surface rapidly. Cover the surface completely.”

19. Each of the products described in paragraphs 16 and 17 list hypochlorous acid as an ingredient.

20. Hypochlorous acid is a common active ingredient in antimicrobial pesticides.

21. Each of the products described in paragraphs 16 and 17 are antimicrobial pesticide because the language on its label indicates an intent to disinfect, sanitize, reduce, or mitigate growth of microbiological organisms.

Section V **Violations**

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

Count 1

23. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

24. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be 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.

25. The store inspection revealed that Respondent distributed, sold, and offered for sale the pesticide Shaman Cleansing Wash (2 oz).

26. On the date of the sale and/or distribution of the pesticide Shaman Cleansing Wash (2 oz), the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

27. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 2

28. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

29. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be 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.

30. The store and headquarters inspections revealed that Respondent distributed, sold, and offered for sale the pesticide Shaman Cleansing Wash (4 oz).

31. On the dates of the sale and/or distribution of the pesticide Shaman Cleansing Wash (2 oz), the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

32. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 3

33. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

34. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be 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.

35. The store and headquarters inspections revealed that Respondent distributed, sold, and offered for sale the pesticide Shaman Cleansing Wash (32 oz).

36. On the dates of the sale and/or distribution of the pesticide Shaman Cleansing Wash (32 oz), the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

37. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 4

38. The facts stated in Paragraphs 13 through 21 above are herein incorporated.
39. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be 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.
40. The store and headquarters inspections revealed that Respondent distributed, sold, and offered for sale the pesticide Shaman Cleansing Wash (1 gal).
41. On the dates of the sale and/or distribution of the pesticide Shaman Cleansing Wash (1 gal), the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
42. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 5

43. The facts stated in Paragraphs 13 through 21 above are herein incorporated.
44. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be 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.
45. The headquarters inspection revealed that Respondent distributed, sold, and offered for sale the pesticide Shaman Cleansing Gel (8 oz).
46. On the date of the sale and/or distribution of the pesticide Shaman Cleansing Gel (8 oz), the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
47. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 6

48. The facts stated in Paragraphs 13 through 21 above are herein incorporated.
49. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be 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.
50. The headquarters inspection revealed that Respondent distributed, sold, and offered for sale the pesticide Shaman Cleansing Gel (1 gal).

51. On the date of the sale and/or distribution of the pesticide Shaman Cleansing Gel (1 gal), the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

52. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

Section VI **Relief Sought**

53. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes the EPA Administrator to assess 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 to \$7,500 for violations that occurred before November 2, 2015, and to \$21,805, for violations that occur after November 2, 2015, and for which penalties are assessed between January 12, 2022, and January 6, 2023. EPA proposes to assess a total civil penalty of \$363,742.55 against Respondent for the above-described violations.

Appropriateness of Proposed Penalty

54. The penalty proposed above has been calculated after consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136l. Specifically, EPA considered the size of the business of Respondent, the effect of the proposed penalty on Respondent's ability to continue in business and the gravity of the alleged violations. In its calculation of the proposed penalty, EPA has taken into account the particular facts and circumstances of the alleged violations, with specific reference to EPA guidance for the calculation of proposed penalties under FIFRA (See Enclosure, December 2010, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)).

55. For purposes of calculating the proposed penalty, Respondent was placed in Category II size of business (total business revenues between \$1,000,000 and \$10,000,000 per year). If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

56. Respondent has the right, upon submittal of certified financial information, to consideration of Respondent's financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent to continue in business.

57. The proposed penalty constitutes a demand only if Respondent fails to raise bona fide issues of ability to pay, or other bona fide affirmative defenses relevant to the determination of any final penalty.

58. Said issues of ability to pay or other affirmative defenses relevant to a final penalty may and should be brought to the attention of Complainant at the earliest opportunity in this proceeding.

59. Payment of the total penalty - \$363,742.55 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted 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>.

60. If Respondent does not contest the findings and assessments set forth above, payment of the penalty assessed herein may be remitted as described in the preceding paragraph, including a reference to the name and docket number of the Complaint. In addition, a copy of the check should be sent to:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Katherine Kacsur, Attorney
kacsur.katherine@epa.gov.

NOTICE OF OPPORTUNITY FOR HEARING

Section VII
Answer and Request for Hearing

61. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Respondent has the right to request a hearing to contest any material fact contained in this Complaint or to contest the appropriateness of the penalty proposed herein. If Respondent wishes to avoid being found in default, Respondent must in accordance with the June 8, 2020 memo Standing Order: Authorization of EPA Region 7 Part 22 Electronic Filing System For Electronic Filing and Service of Documents, file a written answer and request for hearing with the EPA Region 7 Regional Hearing Clerk, at: R7_Hearing_Clerk_Filings@epa.gov or at the following address:

Regional Hearing Clerk
EPA - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- A. the circumstances or arguments that are alleged to constitute the grounds of defense;
- B. the facts that Respondent intends to place at issue; and
- C. whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

62. Any hearing that is requested shall be held and conducted 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.

63. If Respondent fails to file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent’s right to a hearing under FIFRA. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings.

64. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, members of the Environmental Appeals Board, the Regional Judicial

Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case.

Section VIII
Settlement Conference

65. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's business, the gravity of the violation, and the effect of the proposed penalty on Respondent's ability to continue in business. Additionally, the proposed penalty may be adjusted if Respondent establishes a bona fide issue of ability to pay. To explore the possibility of settlement in this matter, contact:

Katherine Kacsur
Assistant Regional Counsel
kacsur.katherine@epa.gov
(913) 551-7734

66. A request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

67. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement, and a Final Order will be issued. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Katherine Kacsur
Office of Regional Counsel

Date

CERTIFICATE OF SERVICE

I certify that on the date below, I delivered the original and one true copy of this Complaint to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that a true and correct copy of the foregoing order was sent this day in the following manner to the addressees:

Copy via Email to Respondent:

Jamie Woolard
Director of Operations
jamie@cbdamericanshaman.com

Sean Pickett
Attorney for Respondent
swp@kclawoffice.com

AND

Copy via Certified Mail, Return Receipt Requested to Respondent:

Nicholas Porto
Registered Agent
1616 W 45th Street, Suite 200A
Kansas City, MO 64111

Jamie Woolard
Director of Operations
2405 Southwest Blvd.
Kansas City, MO 64108

Dated this _____ day of _____, _____.

Signed