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HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2020-0016
	)	
1, 4 GROUP, INC. D.B.A. PIN-NIP	)	CONSENT AGREEMENT
	)	
Meridian, Idaho,	)	
	)	
Respondent.	)	
	)	

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and 1,4 Group, Inc., d.b.a. Pin-Nip (“Respondent”) agrees to issuance of the Final Order attached to this Consent Agreement (“Final Order”).

**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 Enforcement and Compliance Assurance Division, 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**

#### **A. FACTUAL BACKGROUND**

3.1. On or about July 3, 2019, Respondent imported at least three pesticide products from foreign countries—SPUD Guard 2 EC in 200-gallon containers, SPUD Guard 2 EC in 5-gallon containers, and 1,4 SEED. The 200-gallon containers of SPUD Guard 2 EC had no labeling. The 5-gallon containers of SPUD Guard 2 EC and the 1,4 SEED were labeled in Canadian labeling. Respondent imported the 5-gallon containers of SPUD Guard 2 EC and the 1,4 SEED solely for export to Canada.

3.2. On or about July 29, 2019, Respondent imported at least two pesticide products from foreign countries—SPUD Guard 2 EC in 200-gallon containers and CIPC 98%. The 200-gallon containers of SPUD Guard 2 EC had no labeling. The CIPC 98% was labeled in Canadian labeling. Respondent imported the CIPC 98% solely for export to Canada.

#### **B. STATUTORY BACKGROUND**

3.3. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that “it shall be unlawful for any person in any State to distribute or sell to any person . . . any pesticide which is adulterated or misbranded.”

3.4. 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.”

3.5. 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 . . . [and] any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.”

3.6. 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.”

3.7. 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.”

3.8. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell and other grammatical variations of the term” 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.”

3.9. 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 . . . .”

3.10. Under Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is misbranded if “its label does not bear the registration number assigned under section [7 of FIFRA] to each establishment in which it was produced.”

3.11. Under Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if “any word, statement, or other information required by or under authority of [FIFRA] 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.”

3.12. Under Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), 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 [3(d) of FIFRA], are adequate to protect health and the environment.”

3.13. Under Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), 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 [3(d) of FIFRA], is adequate to protect health and the environment.”

3.14. Under Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), a pesticide is misbranded if “the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase . . . .”

3.15. Under Section 2(q)(2)(C)(iv) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iv), a pesticide is misbranded if “there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing . . . when required by regulation of the Administrator to effectuate the purposes of [FIFRA], the registration number assigned to the pesticide under [FIFRA], and the use classification.”

3.16. The regulations at 40 C.F.R. Part 156 require, among other things, that every pesticide product label bear:

- a. The name, brand, or trademark under which the product is sold (40 C.F.R. §§ 156.10(a)(i), (b));
- b. The name and address of the producer, registrant, or person for whom produced (40 C.F.R. §§ 156.10(a)(ii), (c));
- c. The net contents (40 C.F.R. §§ 156.10(a)(iii), (d));
- d. The product registration number (40 C.F.R. §§ 156.10(a)(iv), (e));
- e. The producing establishment number (40 C.F.R. § 156.10(a)(v), (f));
- f. An ingredient statement (40 C.F.R. §§ 156.10(a)(vi), (g));

- g. A hazard and precautionary statement (40 C.F.R. § 156.10(a)(vii), 40 C.F.R. Part 156 subpart D);
- h. Directions for use (40 C.F.R. §§ 156.10(a)(viii), (i)); and
- i. The use classification(s) (40 C.F.R. §§ 156.10(a)(ix), (j)).

3.17. Under Section 2(q)(1)(H) of FIFRA, 7 U.S.C. § 136(q)(1)(H), a pesticide is misbranded if “in the case of a pesticide not registered in accordance with [Section 3 of FIFRA] and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the following: ‘Not Registered for Use in the United States of America.’”

3.18. The regulations at 40 C.F.R. § 152.30(d) provide “An unregistered pesticide may be transferred within the United States solely for export if it meets the following conditions: (1) The product is prepared and packaged according to the specifications of the foreign purchaser; and (2) The product is labeled in accordance with [40 C.F.R. part 156].”

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

3.20. Respondent’s products “SPUD Guard 2 EC” in 200-gallon containers (EPA Reg. No. 72790-2-65726), “SPUD Guard 2 EC” in 5-gallon containers, “1, 4 SEED,” and “CIPC 98%” are pesticides, as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.21. As imported, Respondent’s products SPUD Guard 2 EC in 5-gallon containers, 1,4 SEED, and CIPC 98% were unregistered pesticides because Respondent could not have sold them in the United States while labeled with the Canadian labeling.

## **B. VIOLATIONS**

### **COUNT 1**

3.22. On or about July 3, 2019, Respondent “distributed or sold” 12 200-gallon containers of the pesticide product SPUD Guard 2 EC (EPA Reg. No. 72790-2-65726) as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

3.23. The labeling on the 200-gallon containers of SPUD Guard 2 EC, which Respondent distributed or sold on or about July 3, 2019, omitted information required under 40 C.F.R. Part 156, including the: (1) name, brand or trademark under which it was to be sold; (2) name and address of the producer, registrant, or person for whom it was produced; (3) net contents and ingredient statement; (4) product registration number; (5) producing establishment number; (6) ingredient statement; (7) hazard and precautionary statement; and (8) directions for use. Therefore, the 200-gallon containers of SPUD Guard 2 EC were misbranded, as defined in section 2 of FIFRA, 7 U.S.C. § 136

3.24. Therefore, on or about July 3, 2019, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling the misbranded pesticide SPUD Guard 2 EC.

### **COUNT 2**

3.25. On or about July 29, 2019, Respondent “distributed or sold” one 200-gallon container of the pesticide product SPUD Guard 2 EC (EPA Reg. No. 72790-2-65726) as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

3.26. The labeling on the 200-gallon container of SPUD Guard 2 EC, which Respondent distributed or sold on or about July 29, 2019, omitted information required under 40 C.F.R. Part 156, including the: (1) name, brand or trademark under which it was to be sold; (2)

name and address of the producer, registrant, or person for whom it was produced; (3) net contents and ingredient statement; (4) product registration number; (5) producing establishment number; (6) ingredient statement; (7) hazard and precautionary statement; and (8) directions for use. Therefore, the 200-gallon container of SPUD Guard 2 EC was misbranded, as defined in section 2 of FIFRA, 7 U.S.C. § 136

3.27. Therefore, on or about July 29, 2019, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling the misbranded pesticide SPUD Guard 2 EC.

### COUNT 3

3.28. On or about July 3, 2019, Respondent “distributed or sold” 36 5-gallon containers of SPUD Guard 2 EC as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), which were intended solely for export.

3.29. The 5-gallon containers of SPUD Guard 2 EC, which Respondent distributed or sold on or about July 3, 2019, contained only Canadian labeling. Therefore, the 5-gallon containers of SPUD Guard 2 EC were unregistered for use in the United States.

3.30. The labeling on the 5-gallon containers of SPUD Guard 2 EC, which Respondent distributed or sold on or about July 3, 2019, omitted the statement “Not Registered for Use in the United States of America.” Therefore, the SPUD Guard 2 EC pesticide was misbranded as that term is defined in Section 2(q)(1)(H) of FIFRA, 7 U.S.C. § 136(q)(1)(H).

3.31. Therefore, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a pesticide that was misbranded.



#### COUNT 4

3.32. On or about July 3, 2019, Respondent “distributed or sold” 64 5-gallon containers of 1, 4 SEED as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), which were intended solely for export.

3.33. The containers of 1,4 SEED, which Respondent distributed or sold on or about July 3, 2019, contained only Canadian labeling. Therefore, the containers of 1,4 SEED were unregistered for use in the United States.

3.34. The labeling on the containers of 1,4 SEED, which Respondent distributed or sold on or about July 3, 2019, omitted the statement “Not Registered for Use in the United States of America.” Therefore, the 1,4 SEED pesticide was misbranded as that term is defined in Section 2(q)(1)(H) of FIFRA, 7 U.S.C. § 136(q)(1)(H).

3.35. Therefore, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a pesticide that was misbranded.

#### COUNT 5

3.36. On or about July 29, 2019, Respondent “distributed or sold” 12 pallets of CIPC 98% as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), which were intended solely for export.

3.37. The pallets of CIPC 98%, which Respondent distributed or sold on or about July 29, 2019, contained only Canadian labeling. Therefore, the pallets of CIPC 98% were unregistered for use in the United States.

3.38. The labeling on the pallets of CIPC 98%, which Respondent distributed or sold on or about July 29, 2019, omitted the statement “Not Registered for Use in the United States of

America.” Therefore, the CIPC 98% pesticide was misbranded as that term is defined in Section 2(q)(1)(H) of FIFRA, 7 U.S.C. § 136(q)(1)(H).

3.39. Therefore, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a pesticide that was misbranded.

### **C. ENFORCEMENT AUTHORITY**

3.1. 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 \$20,288 for each offense that occurred after 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. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$25,040 (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:

**In the Matter of: 1, 4 GROUP, INC. D.B.A. PIN-NIP**  
**Docket Number: FIFRA-10-2020-0016**  
**Consent Agreement**  
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**U.S. Environmental Protection Agency**  
**1200 Sixth Avenue, Suite 155, 11-C07**  
**Seattle, Washington 98101**  
**(206) 553-1037**

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, 11 - C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
young.teresa@epa.gov

Andrew Landry  
U.S. Environmental Protection Agency  
Region 10, 20 - C04  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
landry.andrew@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:

a. 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.

b. 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.

c. 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 affirmative defenses and the 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.

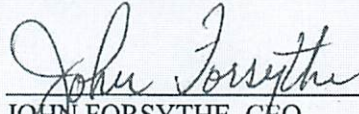
4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

19 Feb 2020

FOR RESPONDENT:



JOHN FORSYTHE, CEO  
1,4 Group, Inc., d.b.a. Pin-Nip

DATED:

2/20/2020

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2020-0016
	)	
1,4 GROUP, INC. D.B.A. PIN-NIP	)	<b>FINAL ORDER</b>
	)	
Meridian, Idaho	)	
	)	
Respondent.	)	
	)	

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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 26 day of February, 2020.

  
RICHARD MEDNICK  
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: 1,4 GROUP, INC. D.B.A. PIN-NIP, Docket No.: FIFRA-10-2020-0016**, 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:

Andrew Futerman  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11 - C07  
1200 Sixth Avenue, Suite 155  
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:

John Forsythe,  
CEO  
1, 4 Group, Inc., d.b.a. Pin-Nip  
2307 East Commercial Street, Suite A  
Meridian, Idaho 83642-5973

DATED this 27 day of February, 2020.

  
\_\_\_\_\_  
TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10