

21 MAY 19 PM 12:03

ENVIRONMENTAL PROTECTION AGENCY

**REGION 6
DALLAS, TEXAS**

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Stoller USA, Inc.

Houston, Texas

Respondent

DOCKET NO. FIFRA-06-2021-0308

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

I. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (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 ("Rules of Practice"), 40 C.F.R. Part 22, for the assessment of a civil administrative penalty against Stoller USA, Inc. ("Respondent") for the distribution and sale of unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA.
2. The Complainant is Cheryl Seager, Director of the Enforcement and Compliance Assurance Division, EPA Region 6, Dallas, Texas, who has been duly delegated to issue this Complaint.
3. The Respondent is Stoller USA, Inc., a corporation doing business in the State of Texas and located at 9090 Katy Freeway, Suite 400, Houston, Texas 77055. Respondent manufactures and sells products designed to aid in the growth and health of agricultural crops.

II. STATUTORY AND REGULATORY BACKGROUND

4. The general purpose of FIFRA is to regulate the sale, distribution, and use of pesticides in the United States. 7 U.S.C. §§ 136 *et. seq.*
5. With exceptions irrelevant to this case, Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides that no person in any State may distribute or sell to any person any pesticide that is not registered pursuant to FIFRA.
6. 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 distribute or sell to any person any pesticide that is not registered under 7 U.S.C. § 136a.
7. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
8. 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.
9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. 152.3 (in relevant part) define “pesticide” as 1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or 2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
10. Section 2(v) of FIFRA, 7 U.S.C. § 136(v), defines “plant regulator” as any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as

plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

11. Section 2(a)(2) of FIFRA, 7 U.S.C. § 136(a)(2), defines “active ingredient,” in the case of a plant regulator, as an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.
12. 40 C.F.R. § 152.15 states that a substance requires registration as a pesticide if:
 - a. the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):
 - i. that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or
 - ii. that the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or
 - 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 (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) 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.
13. The kinds of statements described at 40 C.F.R. § 152.15(a) are commonly known as “pesticidal claims.”
14. 40 C.F.R. § 168.22(a) provides EPA’s interpretation that the prohibitions in Sections 12(a)(1)(A) and (B) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and (B), against offering for sale any unregistered pesticide extends to advertisements in any advertising medium to which pesticide users or the general public have access.

III. GENERAL FACTUAL ALLEGATIONS

15. Respondent is, and at all times relevant to this Complaint was, a corporation doing

business in the state of Texas, and therefore a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

16. At all times relevant, Respondent owned or operated a corporate office located at 9090 Katy Freeway, Suite 400, Houston, Texas 77055.
17. At all times relevant, Respondent owned or operated a manufacturing facility located at 10551 Fisher Road, Houston, Texas 77041.
18. On or about June 22, 2016, an EPA inspector arrived at Respondent’s corporate office to conduct an inspection to determine compliance with FIFRA registration requirements for several of Respondent’s products.
19. At the time of inspection, the manufacturing facility had four production areas, three packaging areas, a temporary lab area, and sampling, staging, and shipping areas.
20. The EPA inspector made inquiries and collected product labels, marketing materials, and sales records regarding at least the following Stoller products:
 - a. Bio-Forge
 - b. CaBY Plus
 - c. Calcium 5S
 - d. Calcium 5X
 - e. Cal-Guard
 - f. Fruit Power
 - g. Flower Power
 - h. Keylate Como Classic
 - i. Nitro Plus 9
 - j. ReZist
 - k. White Label Zinc
 - l. X-tra Power
21. None of the products listed above are registered as pesticides.
22. On its product labels and marketing materials, Respondent states, claims, or implies that the products listed in Paragraph 20 are plant regulators, and thus pesticides that require

registration under FIFRA, because they are intended to affect plant and produce growth, maturation rate, and behavior.

23. On October 3, 2017, inspectors from the Texas Department of Agriculture acting on behalf of EPA collected samples of ten products from the Stoller manufacturing facility, including:

- | | | |
|----|----------------------|---------------|
| a. | Bio-Forge | (Lot# 366044) |
| b. | Calcium 5S | (Lot# 212862) |
| c. | Calcium 5X | (Lot# 212667) |
| d. | Calguard | (Lot# 211861) |
| e. | Flower Power | (Lot# 212737) |
| f. | Fruit Power | (Lot# 212714) |
| g. | Keylate CoMo Classic | (Lot# 212748) |
| h. | Nitro Plus 9 | (Lot# 212428) |
| i. | White Label Zinc | (Lot# 212843) |
| j. | X-Tra Power | (Lot# 212374) |

24. EPA sent these samples to the Analytical Chemistry Branch (ACB) of the Office of Pesticides Programs to determine whether the products contained plant growth regulators.

25. ACB conducted high performance liquid chromatography/tandem mass spectrometry analysis on the samples, with a list of 17 discoverable target analytes for plant growth regulators, including abscisic acid, Indole-3-acetic acid (IAA), Indole-3-butyric acid (IBA), and kinetin (the “ACB Analysis”).

26. Abscisic acid, IAA, IBA, and kinetin are well-known plant hormones and widely recognized as plant growth regulators.¹

27. As detailed in the table below, ACB’s results showed the presence of plant growth regulators in six Stoller products.

¹ IAA and IBA are plant hormones in the auxin family, kinetin a plant hormone in the cytokinin family, and abscisic acid is a plant hormone. EPA has explicitly recognized these substances as plant growth regulators on multiple occasions, including in its pesticides Label Review Manual and its website on Pesticide Labeling Questions and Answers (<https://www.epa.gov/pesticide-labels/pesticide-labeling-questions-answers>).

Product Name	Lot#	Sample ID	Abscisic Acid (ppm)	Indole-3-acetic acid (ppm)	Indole-3-butyric acid (ppm)	Kinetin (ppm)
Bio-Forge	366044	10/03/2017-11181-1-001-BT	0.108	--	--	--
Calcium 5S	212862	10/03/2017-11181-2-001-BT**	--	--	112*	75.70*
Calcium 5X	212667	10/03/2017-11181-3-001-BT	--	--	0.026	BQL
Flower Power	212737	10/03/2017-11181-5-001-BT	--	BQL	BQL	--
White Label Zinc	212843	10/03/2017-11181-9-001-BT	--	--	0.064	--
X-Tra Power	212374	10/03/2017-11181-10-001-BT	--	--	6.05*	0.149

* Values from dilutions. Results of the initial analyses exceeded the instrument calibration range.

** Sample ID from the sample container. Sample descriptor from the corrected COC. The original sample ID and sample descriptor on the COC initially received at ACB were not correct, but the sample ID on the sample container was correct.

BQL: below quantitation limit.

IV. SPECIFIC ALLEGATIONS - VIOLATIONS

Bio-Forge

28. Sales records obtained at the inspection of Respondent's facility indicate that Respondent distributed or sold the product Bio-Forge 508 times from January 2015 through December 2017.
29. The ACB Analysis revealed the presence of abscisic acid in Bio-Forge at 0.108 ppm.
30. On or about April 6, 2017, Respondent's website at <http://www.StollerUSA.com> advertised the product Bio-Forge with the following plant regulator claims:
 - a. "Bio-Forge up-regulates key genes associated with stress: DREB1A, Catalase, Dehydrin RAB18, RD29A."
 - b. "Bio-Forge up-regulates genes controlling root hair growth to enhance nutrient uptake: RLS4."
 - c. "Bio-Forge reduces excess ethylene from stress but leaves ethylene required for normal functioning unaffected."
 - d. "Improved hormone balance for optimal plant functioning."
 - e. "Bio-Forge ensures continuous new root growth for efficient nutrient uptake, especially nitrogen."
 - f. "Bio-Forge helps to improve hormone balance for continued cellular viability and optimal plant functioning throughout the life of the plant."
 - g. "Bio-Forge has the ability to up regulate auxin and auxin transport into the

fruit...”

- h. “The use of Bio-Forge will greatly reduce the sumer [sic] fruit drop on any tree.”
31. Bio-Forge contains or is produced using N, N'-diformyl urea.
32. In two patents² associated with Bio-Forge, in which Stoller is the assignee, the following information is provided on N, N'-diformyl urea:
- a. “Applicant believes that the reaction products claimed herein, particularly N, N'-diformylureas, **may mimic plant growth hormones and/or plant growth regulators** based upon the similarity of their skeletal structure to a variety of biologically active compounds. ... it is believed that this feature will facilitate the biological activity of these molecules” [emphasis added].
33. Because it contains at least one known plant growth regulator ingredient, abscisic acid, and because Respondent made pesticidal claims in this product’s marketing material, Bio-Forge is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a)&(b).
34. Bio-Forge is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
35. Respondent sold Bio-Forge, an unregistered pesticide product, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

CaBy Plus

36. Sales records obtained at the inspection of Respondent’s facility indicate that Respondent distributed or sold the product CaBy Plus 13 times from January 2015 through July 2017.
37. The label for the product CaBy Plus that was collected by the inspector on or about June 22, 2016, makes the following plant regulator claims:
- a. “The ingredients in CaBy Plus can decrease ethylene levels in fruit when

² U.S. Patent No. 6,448,440 B1 (filed Feb. 29, 2000; issued Sep. 10, 2002); U.S. Patent No. 6,040,273 (filed Apr. 9, 1997; issued Mar. 21, 2000).

- applied 20 days pre-harvest.”
- b. “Continuous application until harvest will keep ethylene in fruit at lower levels than normal.”
 - c. “CaBy Plus can be used on the following crops to correct physiological disorders and to preserve fruit quality with pre-harvest treatments ...”
 - d. “To Correct Physiological Disorder: apply 1 to 2 quart/acre ...”
 - e. “To Improve Fruit Quality and Storage: Apply 1 gallon per acre ...”
 - f. “Finish off your crops with weekly sprays of CaBy Plus before harvest for better storage and shelf life.”
38. Polyamines are plant hormones, which EPA recognizes as plant growth regulators.
39. In light of the allegations made above at Paragraph 37, CaBy Plus is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a)&(b).
40. CaBy Plus is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
41. Respondent sold CaBy Plus, an unregistered pesticide product, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Calcium 5S

42. Sales records obtained at the inspection of Respondent’s facility indicate that Respondent distributed or sold the product Calcium 5S three (3) times from January 2015 through July 2017.
43. The ACB Analysis revealed the presence of indole-3-butyric acid at 112 ppm.
44. The ACB Analysis revealed the presence of kinetin at 75.70 ppm.
45. On or about June 22, 2016, marketing material for the product Calcium 5S made the following plant regulator claims:
- a. “Redirects auxin into roots.”

- b. "A special seed-treatment formulation of highly soluble calcium with growth-supporting co-factors to enhance germination and seedling vigor ..."
 - c. "Specially formulated blend of calcium."
 - d. "Promotes rapid, vigorous root tip establishment followed by increased shoot growth for overall improved seedling vigor."
 - e. "Calcium 5S moves up the plant and forces auxin from the new leaves down to the roots to promote more cell division for vigorous root growth."
 - f. "Calcium 5S can be foliar applied to temporarily relieve stress."
 - g. "Calcium 5S can also reduce fruit and flower shedding."
 - h. "Increased root growth produces more cytokinin resulting in increased shoot growth and overall improved seedling vigor."
46. Calcium 5S is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a)&(b).
47. Calcium 5S is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
48. Respondent sold Calcium 5S, an unregistered pesticide product, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Calcium 5X

49. Sales records obtained at the inspection of Respondent's facility indicate that Respondent distributed or sold the product Calcium 5X fifty-five (55) times from January 2015 through July 2017.
50. The ACB Analysis revealed the presence of indole-3-butyric acid at 0.026 ppm and kinetin at below quantitation levels.
51. On or about June 22, 2016, marketing material for the product Calcium 5X that was collected by the inspector made the following plant regulator claims:
- a. "Strengthens cell walls to reduce physical damage."
 - b. "Increased disease resistance to reduce decay."

- c. "Enhanced cell division for increased leaf weight."
52. In light of the allegations made in Paragraph 51 above, Calcium 5X is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a)&(b).
53. Calcium 5X is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
54. Respondent sold Calcium 5X, an unregistered pesticide product, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Flower Power

55. Sales records obtained at the inspection of Respondent's facility indicate that Respondent distributed or sold the product Flower Power 79 times from January 2015 through June 2017.
56. The ACB Analysis revealed the presence of indole-3-acetic acid at below quantitation levels.
57. The ACB Analysis revealed the presence of indole-3-butyric acid at below quantitation levels.
58. On or about June 22, 2016, marketing material for the product Flower Power made the following plant regulator claims:
- a. "A Polyamine Complexed Micronutrient with Growth Enhancing Co-Factors and Anti-Oxidant."
 - b. "Stoller's Flower Power will help to insure sufficient auxin in each flower for stronger pollination during temperature extremes."
 - c. "A follow-up application of Stoller's Fruit Power will insure [sic] adequate cell division to maintain the new fruit."
 - d. "Reduces ethylene lever to allow movement of auxin to the flowering part of the plant."
 - e. "Maintains auxin levels in later developing flowers."

- f. "Improves fertilization."
 - g. "Hold more flowers."
 - h. "Hold more fruit."
 - i. "Improves physiological properties of the fruit."
 - j. "Increases calcium levels and improves growth."
59. Auxin is a plant hormone and a well-known plant growth regulator.
60. Flower Power is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a)&(b).
61. Flower Power is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
62. Respondent sold Flower Power, an unregistered pesticide product, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
- Fruit Power**
63. Sales records obtained at the inspection of Respondent's facility indicate that Respondent distributed or sold the product Fruit Power 24 times from January 2015 through June 2017.
64. On or about June 22, 2016, marketing material for the product Fruit Power made the following plant regulator claims:
- a. "A single application of Fruit Power will insure adequate cell division and cell differentiation."
 - b. "Fruit Power will cause more cell division in the developing young fruit for adequate cell division with proper differentiation of the cells to create a viable embryo."
 - c. "Insures proper development of seed embryo."
 - d. "Maintain more fruit."
65. In light of the allegations made in Paragraph 64 above, Fruit Power is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

66. Fruit Power is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
67. Respondent sold Fruit Power, an unregistered pesticide product, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Keylate CoMo Classic

68. Sales records obtained at the inspection of Respondent's facility indicate that Respondent distributed or sold the product Keylate CoMo Classic 58 times from January 2015 through June 2017.
69. On or about June 22, 2016, marketing material for the product Keylate CoMo Classic made the following plant regulator claims:
 - a. "CoMo is extremely effective in reducing excess ethylene from stress in plants."
 - b. "Improves disease resistance."
 - c. "Controls excessive growth."
 - d. "Enhances nodulation and nitrogen fixation in soybeans and other legumes."
 - e. "Improves flower and fruit load."
 - f. "Reduces the amount of ethylene resulting from stress thereby maintaining vigorous plant growth and increasing genetic expression."
70. In a 2013 PowerPoint presentation and a 2016 or 2017 document written by Stoller employees, John M. Fisher and Jack Keller characterize ingredients in Keylate Como Classic (MEA and DMAPA) as representative polyamines, despite the fact that each substance is a monoamine.
71. While MEA and DMAPA are described as chelators, Stoller documentation claims that

“Keylate chemistry will influence plant growth with or without an accompanying metal,” and connects this chemistry to an explicit plant regulator claim (*i.e.*, “Polyamines are potent growth regulators like auxin and cytokinin”).

72. In light of the allegations made in paragraphs 69-71, Keylate CoMo Classic is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).
73. Keylate CoMo Classic is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
74. Respondent sold Keylate CoMo Classic, an unregistered pesticide product, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Nitro Plus 9

75. Sales records obtained at the inspection of Respondent’s facility indicate that Respondent distributed or sold the product Nitro Plus 9 two-hundred and sixty-one (261) times from January 2015 through July 2017.
76. On or about June 22, 2016, marketing material for the product Nitro Plus 9 made the following plant regulator claims:
 - a. “Increase disease resistance of plants, compared to other forms of nitrogen (patented technology).”
 - b. “Cause plants to develop new roots from the crown.”
 - c. “Act as a supplement to traditionally used nitrogen.”
77. In light of the allegations made in Paragraph 76 above, Nitro Plus 9 is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).
78. Nitro Plus 9 is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
79. Respondent sold Nitro Plus 9, an unregistered pesticide product, in violation of Section

12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

ReZist

80. Sales records obtained at the inspection of Respondent's facility indicate that Respondent distributed or sold the product ReZist 62 times from January 2015 through June 2017.
81. On or about June 22, 2016, marketing material for the product ReZist made the following plant regulator claims:
- a. "University tests have shown that ReZist has the ability to increase the plant's resistance to a variety of diseases."
 - b. "ReZist will also increase the plant's resistance to other negative growth factors such as drought, salty soil, etc."
 - c. "Alternatively, ReZist can be used to increase the plant's resistance to disease before any infection occurs."
 - d. "[ReZist] does, however, increase the plant's natural ability to resist the various diseases and other negative growth factors."
82. In light of the allegations made in Paragraph 81 above, ReZist is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).
83. ReZist is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
84. Respondent sold ReZist, an unregistered pesticide product, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

White Label Zinc

85. Sales records obtained at the inspection of Respondent's facility indicate that Respondent distributed or sold the product White Label Zinc 11 times from January 2015 through May 2017.
86. The ACB Analysis revealed the presence of indole-3-butyric acid at 0.064 ppm.
87. In light of the presence of a plant growth regulator active ingredient as alleged in

Paragraph 86 above, White Label Zinc is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a)&(b).

88. White Label Zinc is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
89. Respondent sold White Label Zinc, an unregistered pesticide product, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

X-Tra Power

90. Sales records obtained at the inspection of Respondent's facility indicate that Respondent distributed or sold the product X-Tra Power 167 times from January 2015 through June 2017.
91. The ACB Analysis revealed the presence of indole-3-butyric acid at 6.05 ppm.
92. The ACB Analysis revealed the presence of kinetin at 0.149 ppm.
93. On or about June 22, 2016, marketing material for the product X-Tra Power stated, in part:
 - a. "Formulated with selectively balanced co-factors."
 - b. "Provides hormonal balance that promotes early root development and plant vigor during the first 2-3 weeks after planting ..."
 - c. "Up-regulates key genes associated with phosphate uptake."
 - d. "X-Tra Power is a selectively balanced nutritional solution with growth-enhancing co-factors to enhance root growth and early seedling vigor."
 - e. "Promotes female flower production."
 - f. "Enhances root growth & stem diameter."
 - g. "X-Tra Power's mixture of growth enhancing co-factors have been selectively balanced to promote vigorous root growth while the plant is in the infant stage."
94. On or about April 6, 2017, Respondent's website at <http://www.StollerUSA.com> advertised the product X-Tra Power with the following plant regulator claims:

Crop Health Therapy Data Sheet

- a. “X-Tra Power is a unique formulation of Mg, Mn, Cu, Zn with amino-acid growth supporting co-factors” [emphasis added].
 - b. “X-Tra Power will enhance root growth, seedling vigor and reproductive growth setting the stage for higher yield potential.”
 - c. Photo caption: “Bigger root mass, thicker stalk, shorter internode length!”
95. In light of the allegations made at Paragraph 91-94 above, X-Tra Power is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a)&(b).
96. X-Tra Power is not registered as a pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
97. Respondent sold X-Tra Power, an unregistered pesticide product, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

V. RELIEF SOUGHT

98. As referenced above, Respondent sold unregistered pesticides 1,241 times from January 2015 through December 2017. Pursuant to FIFRA Section 14(a)(1), 7 U.S.C. § 136l(a)(1), Respondent is subject to the assessment of civil penalties for selling unregistered pesticides in violation of FIFRA Section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A).
99. FIFRA Section 14(a)(1), 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty of not more than \$5,000 for each offense. Pursuant to the 2015 amendments of the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, Congress established revised penalty amounts which EPA promulgated at 40 C.F.R. Part 19 in the 2020 Civil Penalty Inflation Adjustment Rule, 85

Fed. Reg. 83818, effective December 23, 2020. The maximum statutory civil penalty for FIFRA violations occurring after November 2, 2015 and assessed on or after December 23, 2020 is \$20,528 per violation.

100. Pursuant to 40 C.F.R. § 22.14(a)(4)(i), EPA below sets forth the amount of the civil penalty proposed to be assessed, and a brief explanation of the proposed penalty.

PROPOSED CIVIL PENALTY

101. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.
102. To determine the appropriate penalty to be assessed in this case, Complainant considered FIFRA's statutory factors, the factors in the December 2009 FIFRA Enforcement Policy, and the memorandum dated January 11, 2018, titled Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule. As a result, Complainant proposed that Respondent be assessed a penalty of Five Hundred Thirty Thousand Dollars (\$530,000).

VI. APPLICABILITY OF PART 22 AND NOTICE OF OPPORTUNITY FOR HEARING

103. The Rules of Practice, 40 C.F.R. Part 22, govern these proceedings. A copy of the Rules of Practice accompanies the copy of this Complaint that was provided to the Respondent.

Procedures for Quick Resolution under 40 C.F.R. § 22.18(a)

104. Part 22 contemplates the quick resolution of administrative enforcement in exchange for payment in full of the proposed penalty. A respondent wishing to terminate a proceeding

may do so by paying the penalty proposed in the administrative complaint within 30 days after receiving the complaint. To terminate this proceeding under 40 C.F.R. § 22.18(a),

Respondent shall either:

- a. Dispatch a cashier's or certified check payable to the order of the "Treasurer of the United States of America" in the amount of \$530,000 and bearing the notation, "Stoller USA, Inc, Civil Penalty Docket No. FIFRA-06-2021-0308"

to the following address:

- i. For standard mail delivery:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. FIFRA-06-2021-0308
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- ii. For FedEx, DHL, UPS, USPS certified or registered mail, etc:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. FIFRA-06-2021-0308
Cincinnati Finance Center Box 979077
SL-MO-C2-GL
St. Louis, MO 63101

- b. Make an electronic payment by wire transfer (Fedwire) in the amount of \$530,000 with the notation, "Stoller USA, Inc. Civil Penalty Docket No. FIFRA-06-2021-0308," through the Federal Reserve Bank of New York by using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account= 68010727
SWIFT address= FRNYUS33
33 Liberty Street
New York, NY 10045

Beneficiary: US Environmental Protection Agency
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency."

105. Respondent would then file a copy of the check, or other instrument of payment, with:

 Lorena Vaughn
 Region 6 Hearing Clerk (ORC)
 U.S. Environmental Protection Agency - Region 6
 1201 Elm Street, Suite 500
 Dallas, TX 75270-2162
106. If Respondent pays the proposed penalty in full within 30 days after receiving the Complaint, then no answer need be filed.
107. If Respondent wishes to resolve this proceeding by paying the proposed penalty but needs additional time to pay the penalty, Respondent may file a written statement with the Hearing Clerk within 30 days after receiving the Complaint stating that the Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). The written statement need not contain any response to or admission of the allegations in the Complaint. Within 60 days after receiving the Complaint, the Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.
108. Upon receipt of payment in full, the Regional Judicial Officer shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.
109. Full payment of the penalty proposed in this Complaint shall only resolve Respondent's liability for the causes of action alleged in this Complaint.

Answering the Complaint and Requesting a Hearing

110. Under the Rules of Practice, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed in an answer to this Complaint with the Regional Hearing Clerk, EPA Region 6, within thirty (30) days of service of this Complaint.

111. You may request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law. A copy of your answer should be served on Complainant through his counsel at the following address and via e-mail:

Matthew Trawick
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
trawick.matthew@epa.gov

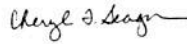
112. Your answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. The answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3) whether a hearing is requested. Hearings held in the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the Rules of Practice as set forth at 40 C.F.R. Part 22.

113. If you fail to file an answer to this Complaint with the Hearing Clerk within thirty (30) days of service, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. The proposed penalty shall become due

and payable by you without further proceedings sixty (60) days after a final order issued upon default judgment.

114. After the issuance of this Complaint, the Rules of Practice at 40 C.F.R. § 22.8 prohibit *ex parte* (unilateral) discussion of the merits of the proceeding with the EPA Administrator, the presiding Administrative Law Judge, any member of the U.S. EPA Environmental Appeals Board, or any other person likely to advise these officials on any decision in this proceeding.
115. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal conferences. Therefore, regardless of whether you request a hearing, you are invited to confer informally with Complainant through Matt Trawick, the EPA attorney assigned to this case, concerning the alleged violations, the facts of this matter, and the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel. An informal conference does not, however, affect your obligation to file an answer to this Complaint should you desire a hearing. If a settlement is reached between EPA and Respondent, it shall be memorialized by the parties' issuance of a written Consent Agreement, which shall be effective upon issuance of a Final Order by the Regional Judicial Officer.

Signed in Dallas, Texas on this 18th day of May 2021.



Digitally signed by CHERYL SEAGER
DN: cn=U.S. Government,
ou=Environmental Protection Agency,
email=CHERYL_SEAGER,
c=U.S.A., o=U.S. EPA,
ou=Region 6, email=cheryl.seager@epa.gov,
serial=1793
Date: 2021.05.18 17:28:20 -0500

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U. S. EPA, Region 6

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was delivered to:

Regional Hearing Clerk
U.S. EPA - Region 6,
1201 Elm Street, Suite 500,
Dallas, Texas 75270-2102

And that a true and correct copy of the Complaint and Notice of Opportunity for Hearing and the Rules of Practice at 40 C.F.R. Part 22 were placed in the United States Mail, certified mail, return receipt requested, addressed to the following representative authorized to receive service on Respondent's behalf:

Lynn L. Bergeson, Esquire
Bergeson and Campbell PC
2200 Pennsylvania Avenue, NW
Suite 100W
Washington, DC 20037-1701

CERTIFIED MAIL NUMBER: 7014 0150 0000 2454 8102

By: 

Office of Regional Counsel

U.S. EPA, Region 6