

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

FILED

Dec 04, 2024

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U.S. EPA REGION 4  
HEARING CLERK

In the Matter of:

Atticus, LLC

Respondent.

Docket No. FIFRA-04-2024-3026(b)

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act), as amended, 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.) Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions of FIFRA and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is Director of the Enforcement and Compliance Assurance Division, of the Region 4 office of the United States Environmental Protection Agency (the EPA), who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
5. Respondent is Atticus, LLC, a limited liability company doing business in the State of North Carolina. This proceeding pertains to Respondent's facility located at 940 NW Cary Parkway, Suite 200, Cary, North Carolina, 27513 (the Facility).

### **III. GOVERNING LAW**

6. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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-organisms on or in living man or other living animals) which the Administrator declares to be a pest.
7. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
8. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, pesticides that are sold or distributed in the United States are required to be registered with the EPA.
9. Pursuant to Section 3(d)(1)(C) of FIFRA, 7 U.S.C. § 136a(d)(1)(C), if it is determined that a pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator—then the EPA shall classify the pesticide, or the particular uses to which the determination applies, as being for restricted use.
10. Pursuant to 40 C.F.R. § 152.168(a), any product classified for restricted use shall not be advertised unless the advertisement contains a statement of its restricted use classification.
11. Pursuant to Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under FIFRA for restricted use without giving the classification of the product assigned to it under Section 3 of FIFRA, 7 U.S.C. § 136a.
12. The term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
13. The term “registrant” is defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y), to mean a person who has registered any pesticide pursuant to FIFRA.
14. Section 14(a) of FIFRA, 7 U.S.C. § 136/(a), in conjunction with 40 C.F.R. Part 19, Adjustments of Civil Monetary Penalties for Inflation, authorizes the assessment of a civil penalty for violations of the Act.

### **IV. FINDINGS OF FACTS**

15. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
16. On or around August 19, 2021, Respondent registered the product “Serpent with VenomCap Technology” with the EPA as a pesticide under FIFRA. Through that process, the product was given

the registration number 91234-249 and classified as being for restricted use pursuant to Section 3(d)(1)(C) of FIFRA, 7 U.S.C. § 136a(d)(1)(C).

17. On or around March 2, 2023, Respondent registered the product “Cortes Max Insecticide” with the EPA as a pesticide under FIFRA. Through that process, the product was given the registration number 91234-273 and classified as being for restricted use pursuant to Section 3(d)(1)(C) of FIFRA, 7 U.S.C. § 136a(d)(1)(C).
18. On or around June 7, 2023, Respondent registered the product “Cryptonyx 360” with the EPA as a pesticide under FIFRA. Through that process, the product was given the registration number 91234-292 and classified as being for restricted use pursuant to Section 3(d)(1)(C) of FIFRA, 7 U.S.C. § 136a(d)(1)(C).
19. On or around June 15, 2023, Respondent registered the product “Cryptoid XL” with the EPA as a pesticide under FIFRA. Through that process, the product was given the registration number 91234-295 and classified as being for restricted use pursuant to Section 3(d)(1)(C) of FIFRA, 7 U.S.C. § 136a(d)(1)(C).
20. On or around April 11, 2024, authorized representatives of the EPA conducted an inspection of the Facility. The inspectors collected certain sales literature that Respondent had distributed to attendees at industry trade shows, including a “2024 Ag Portfolio” booklet and an “Ignite Prepay Offer” brochure.
21. A review of the 2024 Ag Portfolio booklet showed that it advertised a list of the products offered for sale by Respondent. This list included the registered pesticides Serpent with VenomCap Technology, Cortes Max Insecticide, Cryptonyx 360, and Cryptoid XL, but it did not include a statement regarding the restricted use classification for each product as required by 40 C.F.R. § 152.168(a) and Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E).
22. A review of the “Ignite Prepay Offer” brochure showed that it also advertised the pesticides Serpent with VenomCap Technology, Cortes Max Insecticide, Cryptonyx 360, and Cryptoid XL, and that it also failed to include a statement regarding the restricted use classification for each product as required by 40 C.F.R. § 152.168(a) and Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E).

## **V. ALLEGED VIOLATIONS**

23. The EPA alleges that Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on at least four occasions by advertising Serpent with VenomCap Technology, Cortes Max Insecticide, Cryptonyx 360, and Cryptoid XL without stating the restricted use classification of each product, as described in Section IV above.

## **VI. STIPULATIONS**

24. The issuance of this CAFO simultaneously commences and concludes this proceeding.  
*See* 40 C.F.R. § 22.13(b).

25. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the conditions specified in this CAFO;
- (e) waives any right to contest the alleged violations of law set forth in Section V (Alleged Violations) of this CAFO; and
- (f) waives its rights to appeal the Final Order accompanying this CAFO.

26. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of FIFRA and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept or issue this CAFO;
- (f) waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying this Consent Agreement; and
- (g) agrees to comply with the terms of this CAFO.

27. In accordance with 40 C.F.R. § 22.5, the individuals named in the Certificate of Service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

## VII. TERMS OF PAYMENT

28. Respondent consents to the payment of a civil penalty for the violations alleged herein, which was calculated in accordance with the Act, in the amount of **TWENTY THOUSAND, FOUR HUNDRED DOLLARS (\$27,400.00)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.
29. Respondent shall pay the civil penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the following EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions, see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. In addition, Respondent shall identify every payment with Respondent's name and the docket number of this CAFO, **Docket No. FIFRA-04-2024-3026(b)**.
30. Respondent shall send proof of each payment, within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk  
R4\_Regional\_Hearing\_Clerk@epa.gov

and

Perrin Collins  
Chemical Safety and Land Enforcement Branch  
Enforcement and Compliance Assurance Division  
collins.perrin@epa.gov

and

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
CINWD\_AcctsReceivable@epa.gov

31. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or Automated Clearing House transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. **FIFRA-04-2024-3026(b)**.
32. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling

the delinquent claim. Accordingly, the EPA may require Respondent to pay the following amounts on any amount overdue:

- (a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within thirty (30) days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (30) days of the Effective Date of this CAFO, interest will continue to accrue on any unpaid portion until the unpaid portion of the penalty and accrued interest is paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b), and 40 C.F.R. § 13.11(a).
  - (b) Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. See 40 C.F.R. § 13.11(c).
  - (c) Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average costs incurred. See 31 C.F.R. § 901.9(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
33. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:
- (a) refer the debt to a credit reporting agency or a collection agency (see 40 C.F.R. §§ 13.13 and 13.14);
  - (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H);
  - (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (see 40 C.F.R. § 13.17); and/or
  - (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136f(a)(5).

34. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

#### **VIII. EFFECT OF CAFO**

35. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
36. In accordance with 40 C.F.R. § 22.18(c), full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall satisfy the requirements of this CAFO; but shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
37. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 14(a) of the Act, 7 U.S.C. § 136/(a), as well as criminal sanctions as provided in Section 14(b) of the Act, 7 U.S.C. § 136/(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
38. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
39. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent hazard as provided under the Act.
40. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
41. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
42. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
43. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
44. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

45. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
46. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
47. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
48. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
49. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **IX. EFFECTIVE DATE**

50. This CAFO shall become effective upon execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

**[Remainder of Page Intentionally Left Blank]**

**Complainant and Respondent will Each Sign on Separate Pages]**



The foregoing Consent Agreement In the Matter of **Atticus, LLC**, Docket Number **FIFRA-04-2024-3026(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

  
Signature

11/11/24  
Date

Printed Name: Randall V Canady

Title: Founder & CEO

Address: 940 NW Cary Parkway, Ste 200  
Cary, NC 27513

The foregoing Consent Agreement In the Matter of **Atticus, LLC**, Docket Number **FIFRA-04-2024-3026(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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Keriema S. Newman  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Atticus, LLC,**

Respondent.

Docket No. **FIFRA-04-2024-3026(b)**

**FINAL ORDER**

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order 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.

Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

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Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, In the Matter of **Atticus, LLC**, Docket No. **FIFRA-04-2024-3026(b)**, were filed and copies of the same were emailed to the Parties as indicated below.

**Via email to all Parties at the following email addresses:**

To Respondent:      Dave Bolin, Ph.D.  
Vice President  
Atticus, LLC  
dave.bolin@atticusllc.com  
(984) 465-4754

Cristen Rose  
Counsel for Atticus, LLC  
Partner  
Haynes and Boone, LLP  
cristen.rose@haynesboone.com  
(202) 654-4506

To EPA:                Perrin Collins  
Life Scientist  
collins.perrin@epa.gov  
(404) 562-9330

Kate Forrest  
Attorney-Adviser  
forrest.kate@epa.gov  
(404) 562-9507

Robert Caplan  
Senior Attorney  
caplan.robert@epa.gov  
(404) 562-9520

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Regional Hearing Clerk  
R4\_Regional\_Hearing\_Clerk@epa.gov