

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2025-0001
)	
Beckart Environmental, Inc.,)	Proceeding to Assess a Civil Penalty
Kenosha, Wisconsin,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
)	

Consent Agreement and Final OrderPreliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) 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 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Beckart Environmental, Inc., a corporation doing business in the State of Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is 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.

11. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1). 7 U.S.C. § 136(t).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if 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.

40 C.F.R. § 152.15(a)(1).

15. A substance also is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if 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. 40 C.F.R. § 152.15(c).

16. 40 C.F.R. § 168.22(a), in pertinent part, states 1) FIFRA Section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to “offer for sale” any pesticide if it is unregistered; and 2) EPA interprets FIFRA Section 12(a)(1)(A) as extending to advertisements in any advertising medium to which pesticide users or the general public have access.

17. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA, of up to \$21,805 for each offense that occurred after November 2, 2015 where penalties are assessed on or after January 12, 2022, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

18. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. Respondent is a “commercial applicator” as defined at Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3).

20. Respondent is one or more of a “wholesaler,” “dealer,” “retailer,” or “other distributor,” within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

21. At all times relevant to this CAFO, Respondent owned or operated a place of business at and about 6900 46th Street, Kenosha, Wisconsin.

22. At all times relevant to this CAFO, Respondent distributed or sold a product variously called “AquaDry Kit”, “Aqua-Dry Kit”, “Aqua Dry 500”, “Aqua Dry 500G”, “Chlorine Dioxide Packet, Two Part” and other variations including the words “AquaDry”, “Aqua Dry” or “Aqua-Dry” (“Aqua-Dry Kit”).

23. At all times relevant to this CAFO, Respondent distributed or sold a product variously called “Air Relief 3001” or “Air-Relief 3001” (“Air Relief 3001”). This CAFO refers to Aqua-Dry Kit and Air Relief 3001 collectively as the “unregistered products.”

24. On or about February 7, 2022, an inspector employed by the Wisconsin Department of Agriculture, Trade and Consumer Protection (“WDATCP”) and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business at and about 6900 46th Street, Kenosha, Wisconsin (“inspection”).

25. During the inspection, WDATCP requested records from Respondent concerning the unregistered products.

26. During the inspection, Respondent provided WDATCP with bin labels and bin label statements for the unregistered products.

27. During the inspection, Respondent provided WDATCP with a bin label for Aqua-Dry Kit that referenced Respondent’s website.

28. On or after February 7, 2022, Respondent provided EPA a statement and records concerning its receipt, production, inventory, and distribution or sale of the unregistered products, as WDATCP requested during the inspection.

Aqua-Dry Kit

29. On various dates between January 2021 and July 2022, Respondent’s website displayed the following claims regarding or applicable to Aqua-Dry Kit:

- a. *"Chlorine Dioxide Tablets for . . . Disinfection"*
- b. *"well-known as an effective agent for oxidizing microorganisms"*
- c. *"can help . . . sanitize and disinfect a wide variety of surfaces"*
- d. *"Aqua-Dry . . . is safe . . . and eliminates mold, mildew and other bacterial microorganisms"*
- e. *"the unique ability of chlorine dioxide to eliminate mold, mildew and other anaerobic microorganisms"*
- f. *"AquaDry is a useful tool for oxidizing microorganisms"*
- g. *"clearly the better option for . . . sterilization, mold/mildew elimination"*
- h. *"The wide-ranging uses of our AquaDry kits include . . . Wastewater disinfection . . . Drinking water disinfection"*
- i. *"These [AquaDry] pouches have been EPA approved"*
- j. *"Cl02 products are widely known to be effective for a number of applications, including. . . Produce sanitation . . . Mold removal . . . Surface disinfection"*
- k. *"Whether you're using Cl02 to treat industrial wastewater or simply sterilize surfaces, Beckart Environmental is sure to have an innovative chlorine dioxide product that's perfect"*

30. At all times relevant to this CAFO, Respondent claimed, stated, or implied (by labeling or otherwise) that Aqua-Dry Kit can or should be used as a pesticide.

31. At all times relevant to this CAFO, Respondent had actual or constructive knowledge that Aqua-Dry Kit would be used, or is intended to be used, for a pesticidal purpose.

32. At all times relevant to this CAFO, Aqua-Dry Kit was intended for a pesticidal purpose.

33. At all times relevant to this CAFO, Aqua-Dry Kit was a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

34. At all times relevant to this CAFO, Aqua-Dry Kit was not registered as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

Air Relief 3001

35. On various dates between January 2021 and July 2022, Respondent’s website displayed the following claims regarding or applicable to Air Relief 3001:

- a. *“produces a chlorine dioxide vapor to disinfect nearly any enclosed space”*
- b. *“Eliminates . . . Mold, Mildew and Bacteria”*
- c. *“a great all-in-one odor control disinfectant for a variety of applications including . . . eliminating mold from drywall”*
- d. *“many . . . disinfectant benefits”*
- e. *“It’s also EPA registered”*
- f. *“Whether you’re using Cl02 to treat industrial wastewater or simply sterilize surfaces, Beckart Environmental is sure to have an innovative chlorine dioxide product that’s perfect”*

36. At all times relevant to this CAFO, Respondent claimed, stated, or implied (by labeling or otherwise) that Air Relief 3001 can or should be used as a pesticide.

37. At all times relevant to this CAFO, Respondent had actual or constructive knowledge that Air Relief 3001 would be used, or is intended to be used, for a pesticidal purpose.

38. At all times relevant to this CAFO, Air Relief 3001 was intended for a pesticidal purpose.

39. At all times relevant to this CAFO, Air Relief 3001 was a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

40. At all times relevant to this CAFO, Air Relief 3001 was not registered as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

Counts 1-37

41. Complainant incorporates by reference the allegations contained in paragraphs 1 through 40 of this CAFO.

42. On at least 37 dates in 2021 and 2022, Respondent distributed or sold Aqua-Dry Kit to any person.

43. Each of Respondent’s 37 distributions or sales of the unregistered pesticide Aqua-Dry Kit constitute an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 38-76

44. Complainant incorporates by reference the allegations contained in paragraphs 1 through 40 of this CAFO.

45. On at least 39 dates in 2021 and 2022, Respondent distributed or sold Air Relief 3001 to any person.

46. Each of Respondent’s 39 distributions or sales of the unregistered pesticide Air Relief 3001 constitute an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

47. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$546,972. In determining the

penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$546,972 civil penalty for the FIFRA violations by one of the following methods:

a. *for checks sent by regular U.S. Postal Service mail:* sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979078
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

b. *for checks sent by express mail:* sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979078
U.S. EPA Fines and Penalties
3180 Rider Trail S.
Earth City, MO 63045

The check must note Respondent's name and the docket number of this CAFO.

c. *for electronic funds transfer:* electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

d. for Automated Clearinghouse (ACH) also known as REX or remittance express: ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

e. for on-line payment: an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

49. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Claudia Niess, Enforcement Officer
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
niess.claudia@epa.gov
and

RS1ecab@epa.gov

Kris Vezner, Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
vezner.kris@epa.gov

50. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the effective date of this CAFO. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days.

51. Late Penalty Actions. In addition to the amounts described in the prior

Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency pursuant to 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 government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 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 EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the amount outstanding pursuant to 7 U.S.C. § 136l(a)(5).

52. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

53. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

54. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to Milton Wise at EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the effective date of this CAFO, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- d. In the event that that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

General Provisions

55. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: vezner.kris@epa.gov (for Complainant), and chrisc@dkblaw.com (for Respondent).

Respondent understands that the CAFO will become publicly available upon filing.

56. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

57. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

58. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

59. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

60. The terms of this CAFO bind Respondent, its successors and assigns.

61. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

62. Each party agrees to bear its own costs and attorney fees, in this action.

63. This CAFO constitutes the entire agreement between the parties.

Beckart Environmental, Inc., Respondent

11-20-24
Date

Daniel Fedrigon
Daniel Fedrigon
Vice President
Beckart Environmental, Inc.

United States Environmental Protection Agency, Complainant

Date

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

In the Matter of:
Beckart Environmental, Inc.
Docket No. FIFRA-05-2025-0001

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

