



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: FIFRA-08-2018-0001

IN THE MATTER OF:

BEDROOM GUARDIAN LLC

RESPONDENT

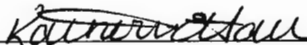
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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 10<sup>th</sup> DAY OF October, 2017.

  
\_\_\_\_\_  
Katherin E. Hall  
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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**In the Matter of:** )  
 )  
Bedroom Guardian LLC )  
1712 Pioneer Avenue, Suite 201 )  
Cheyenne, Wyoming 82001, )  
 )  
**Respondent** )  
 )

**Docket No. FIFRA-08-2018-0001**

**COMBINED COMPLAINT AND CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency Region 8 (EPA), and Respondent, Bedroom Guardian LLC (Bedroom Guardian), by their undersigned representatives, hereby consent and agree as follows.

**I. JURISDICTION**

1. This proceeding is subject to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits*, 40 C.F.R. Part 22.
2. This combined complaint and consent agreement (Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
3. The Administrator of the EPA is authorized to bring an action under section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a)(1), for civil administrative penalties against any person the EPA alleges has violated a requirement or prohibition of FIFRA. The authority granted to the Administrator has been delegated to the EPA signatories to this Agreement.
4. Bedroom Guardian admits the jurisdictional allegations in this Agreement, and neither admits nor denies the EPA's factual allegations contained herein.

**II. ALLEGATIONS**

5. Bedroom Guardian is a "person" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
6. Bedroom Guardian's principal place of business is an "establishment," as defined by section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) of FIFRA, and is located at 1712 Pioneer Avenue, Suite 201, Cheyenne, Wyoming 82001.
7. Bedroom Guardian was producing, distributing, or selling Bedroom Guardian device for bedbugs (Bedbug Product) at its establishment in Cheyenne, Wyoming.

8. Section 2(gg) of FIFRA, 7 U.S.C. § 136 (gg), states that “[t]he term ‘to 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....”
9. At all times relevant to the alleged violations, Bedroom Guardian was a “distributor/seller” as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), of a “pesticide” as defined in FIFRA section 2(u), 7 U.S.C. § 136(u), and a “producer” as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).
10. Under section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is “unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered.”
11. 40 C.F.R. § 167.3 states that the act of repackaging is pesticide production.
12. 40 C.F.R. § 167.20(a)(1) states that “[a]ny establishment where a pesticidal product is produced must be registered with the Agency.”
13. On February 23, 2016, an EPA inspector attempted to inspect Bedroom Guardian’s establishment located at 1712 Pioneer Avenue in Cheyenne, Wyoming, but was unable to conduct an inspection.
14. On February 23, 2016, the EPA inspector issued a Stop Sale, Use, or Removal Order to Bedroom Guardian for Bedroom Guardian’s Bedbug Product, and delivered it to the registered agent for Bedroom Guardian.
15. EPA conducted follow-up discussions with a representative of Bedroom Guardian, and on or about June 30, 2016, received a copy of the label for the Bedbug Product.
16. Bedroom Guardian’s Bedbug Product is comprised of repackaged Perma-Guard Crawling Insect Control, an EPA-registered pesticide product (EPA Reg. No. 73729-1-67197).
17. Bedroom Guardian was repackaging this registered pesticide product at its Cheyenne establishment.
18. The repackaged pesticide product was not registered with the EPA.

### **III. VIOLATIONS**

19. Repackaging constitutes pesticide production. Bedroom Guardian’s Cheyenne establishment is not an EPA-registered pesticide producing establishment. Bedroom Guardian’s repackaging of Perma-Guard Crawling Insect Control at its Cheyenne establishment is a violation of FIFRA and 40 C.F.R. § 167.20(a).
20. Bedroom Guardian’s Bedbug Product is not registered with the EPA. Bedroom Guardian’s distribution and sale of the Bedbug Product is a violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**IV. PAYMENT OF CIVIL PENALTY**

21. Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty for violations of the Act and its implementing regulations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 1361(a), may be assessed by administrative order.
22. Bedroom Guardian produced pesticides at an unregistered establishment, and distributed or sold unregistered pesticides in violation of FIFRA, and is therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 1361.
23. Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of Bedroom Guardian, the effect on Bedroom Guardian's ability to continue in business, and the gravity of the violation.
24. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), the EPA proposes to assess a total civil penalty of \$4,512 against Bedroom Guardian for the above-described violations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 1361(a), may be assessed by administrative order.
25. Bedroom Guardian consents, for the purpose of settlement and to avoid further litigation, to the issuance of a Final Order in this matter and agrees to pay the civil penalty of \$4,512 within 30 days of the effective date of the Final Order as follows:
  - a. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is considered to be the date processed by U.S. Bank, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
  - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be made as follows:

**Regular Mail:**

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
Box 979077  
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

US Bank  
Cincinnati Finance Center Box 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Craig Steffen  
513-487-2091

**Wire Transfers:**

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**ACH (also known as REX or remittance express):**

Please indicate the name and docket number of this case on automated clearinghouse (ACH) payments to EPA made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of U.S. Treasury Facility  
5700 Rivertech Court  
Riverdale, MD 20737  
U.S. Treasury Contact Information:  
Randolph Maxwell: 202-874-7026  
Remittance Express (REX): 1-866-234-5681

**On-line Payment:**

There is now an on-line payment option, available through the Department of the Treasury. This payment option can be accessed from [www.pay.gov](http://www.pay.gov).

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

26. At the same time that payment is made, notice that the payment has been made shall be provided to the following:

David Golden (8ENF-AT-TP)  
Technical Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

Melissa Haniewicz (8RC)  
Regional Hearing Clerk  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

27. If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.
28. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the first late day, 30 days of interest will have accrued).
29. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6 percent per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6 percent penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

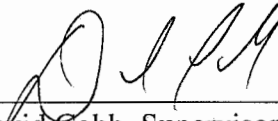
#### **V. TERMS AND CONDITIONS**

30. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Bedroom Guardian and Bedroom Guardian's successors or assigns. Any change in ownership or corporate status of Bedroom Guardian, including, but not limited to, any transfer of assets or real or personal property, shall not alter Bedroom Guardian's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.
31. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Bedroom Guardian's failure to perform pursuant to the terms of this Agreement.
32. The undersigned representative of Bedroom Guardian certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.
33. Each party shall bear its own costs and attorney fees in connection with this matter.
34. Pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554, and 40 C.F.R. § 22.15, Bedroom Guardian has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement. By signing and returning this Agreement to the EPA, Bedroom Guardian waives its opportunity for a hearing.

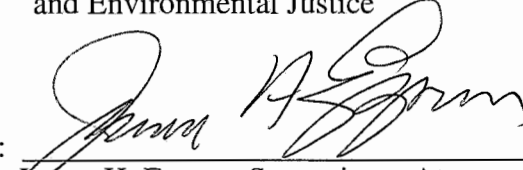
- 35. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full payment of the civil penalty shall resolve Bedroom Guardian’s liability for civil penalties for the violations alleged herein.
- 36. Nothing in this Agreement shall relieve Bedroom Guardian of the duty to comply with FIFRA and its implementing regulations.
- 37. Failure by Bedroom Guardian to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8,**  
Office of Enforcement, Compliance  
and Environmental Justice  
Complainant

Date: 10-2-17

By:   
\_\_\_\_\_  
David Cobb, Supervisor  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 10/3/17

By:   
\_\_\_\_\_  
James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

**BEDROOM GUARDIAN, LLC,**  
Respondent

Date: 9/27/2017

By:   
\_\_\_\_\_  
Authorized Representative of  
Bedroom Guardian LLC

Printed Name: Rescott Atkinson

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **BEDROOM GUARDIAN LLC; DOCKET NO.: FIFRA-08-2018-0001** was filed with the Regional Hearing Clerk on October 10, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Charles Figur, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on October 10, 2017, to:

Respondent

Prescott Atkinson  
Bedroom Guardian LLC  
1712 Pioneer Avenue, #201  
Cheyenne, Wyoming 82001

Scott A. Homar  
The Kuker Group LLP  
508 East 18<sup>th</sup> Street  
Cheyenne, Wyoming 82001

And emailed to:

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

October 10, 2017



Melissa Haniewicz  
Regional Hearing Clerk