

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2022-0214
)	
CESCO SOLUTIONS, INC.,)	CONSENT AGREEMENT
)	
Bellingham, Washington,)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

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

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

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA,

7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Pursuant to 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 sell or distribute to any person any pesticide that is not registered under Section 3 of FIFRA.

3.2. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

3.3. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.4. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.5. The regulation at 40 C.F.R. § 152.3, defines “pesticide product” as “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold.”

3.6. The regulation at 40 C.F.R. § 152.15 states that “a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if: (a) the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise)

that the substance can or should be used as a pesticide; . . . (b) the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purpose (by itself or in combination with any other substances); . . . or (c) the person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.”

3.7. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as “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 (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section [25(c)(1) of FIFRA].”

3.8. 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.”

3.9. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

3.10. Under Section 2(q)(2)(C)(iv) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iv), “a pesticide is misbranded if there is not affixed to the container . . . a label bearing, when required by regulation of the Administrator to effectuate the purposes of this subchapter, the registration number assigned to the pesticide under this subchapter.”

3.11. The regulation at 40 C.F.R. § 156.10(a)(1)(iv) states that “[e]very pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently . . . [t]he product registration number as prescribed in paragraph (e) of this section.”

3.12. The regulation at 40 C.F.R. § 156.10(e) states that “[t]he registration number assigned to the pesticide product at the time of registration shall appear on the label, preceded by the phrase ‘EPA Registration No.,’ or the phrase ‘EPA Reg. No.’”

3.13. Respondent is incorporated in the State of Washington. Therefore, Respondent is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

Counts 1-11: Distribution of an Unregistered Pesticide

3.14. On about March 5, 2021 and January 4, 2022, Respondent “distributed or sold” the product called “Zinc Sulfate” at least 11 times, as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

3.15. “Zinc Sulfate” is a pesticide requiring registration pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.15 on the basis of the following pesticidal claims Respondent made about “Zinc Sulfate”:

- a. The product label described the product as a “moss remover.”
- b. On or about March 5, 2021, Respondent offered “Zinc Sulfate” for sale on Amazon.com.
- c. The product description for four offers of “Zinc Sulfate” on Amazon.com stated, “Zinc Sulfate can also be used to remove unwanted moss from roof and garden,” which is a pesticidal claim.
- d. On or about March 5, 2021, Respondent offered “Zinc Sulfate” for sale on Walmart.com.

- e. The product description for four offers of “Zinc Sulfate” on Walmart.com stated, “Zinc Sulfate can be used to remove moss from roofs” and “Provide your plants with the zinc fertilizer they need to thrive or use to remove moss from your roof,” which are pesticidal claims.
- f. On or about January 4, 2022, Respondent offered “Zinc Sulfate” for sale on ebay.com.
- g. The product description for three offers of “Zinc Sulfate” on ebay.com stated, “Provide your plants with the zinc fertilizer they need to thrive or use to remove moss from your roof,” which is a pesticidal claim.

3.16. At no time between March 5, 2021 and January 4, 2022 was “Zinc Sulfate” registered with EPA as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, each occasion alleged in Paragraph 3.15 where Respondent sold, distributed, held for distribution, held for shipment, or shipped the product “Zinc Sulfate” constitutes the sale or distribution of an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 12: Distribution or Sale of a Misbranded Pesticide

3.17. The product “Solar Ray” (EPA Registration No. 10897-26-64216) is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.18. On or around July 23, 2019, Respondent “distributed or sold” the pesticide “Solar Ray” on at least one occasion, as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

3.19. The pesticide product “Solar Ray” that Respondent sold or distributed on or about July 23, 2019, bore a label with the incorrect EPA Registration Number, in violation of 40 C.F.R. § 156.10(a)(1)(iv) and (e).

3.20. Therefore, on or around July 23, 2019, Respondent distributed or sold the misbranded pesticide product Solar Ray at least once in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

3.21. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$21,805 for each offense.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$54,987 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Nicholas Hurwit
U.S. Environmental Protection Agency
Region 10
Hurwit.Nicholas@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

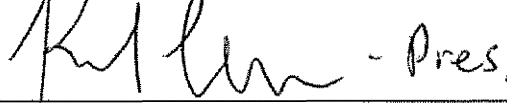
4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

11/29/22

FOR RESPONDENT:

 - Pres.

KARL LARSEN, President and CEO
Cesco Solutions, Inc.

DATED:

FOR COMPLAINANT:

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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2022-0214
)	
CESCO SOLUTIONS, INC.,)	FINAL ORDER
)	
Bellingham, Washington,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2022.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Cesco Solutions, Inc., Docket No.: FIFRA-10-2022-0214**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered electronically to:

Lena Freij
Assistant Regional Counsel
U.S. Environmental Protection Agency
Lena.Freij@epa.gov

Karl Larson
President, CEO, and Registered Agent
Cesco Solutions, Inc.
Karl.Larsen@cescosolutions.com

DATED this _____ day of _____, 2022.

Regional Hearing Clerk
EPA Region 10