



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

August 23, 2021

VIA EMAIL ONLY

Mr. Peter Spiegel, CEO
Air Doctor, LLC
14724 Ventura Boulevard
Suite 200
Sherman Oaks, California 91403
peter@idealliving.com

Consent Agreement and Final Order
In the Matter of AirDoctor, LLC
Docket Number FIFRA-05-2021-0024

Mr. Spiegel:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 23, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$44,500 is to be paid in the manner described in paragraphs 53-54. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

Nguyen,
Anna

Digitally signed by
Nguyen, Anna
Date: 2021.08.16
08:38:47 -05'00'

Anna Nguyen
Pesticides and Toxics Compliance Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2021-0024
)	
AirDoctor, LLC)	Proceeding to Assess a Civil Penalty
Sherman Oaks, California)	Under Section 14(a) of the
)	Federal Insecticide, Fungicide, and
)	Rodenticide Act, 7 U.S.C. § 136l(a)
Respondent.)	
_____)	

Consent Agreement and Final Order
Preliminary 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 & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is AirDoctor, LLC, a Delaware corporation doing business at 14724 Ventura Boulevard, Suite 200, Sherman Oaks, California 91403.

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 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA. These regulations are found at 19 C.F.R. Part 12.110 *et seq.* See also 19 C.F.R. § 12.1(b).

11. The regulation at 19 C.F.R. § 12.111 states, in pertinent part, that imported devices must not bear any statement, design, or graphic representation that is false or misleading in any particular.

12. The regulation at 19 C.F.R. § 12.112(a) states, in pertinent part, that an importer desiring to import devices into the United States shall submit to the EPA, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides or Devices (NOA) on U.S. EPA Form 3540-1.

13. The term “importer” is defined at 19 C.F.R. § 101.1 as the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be the importer of record.

14. The regulation at 40 C.F.R. § 152.500 sets forth the requirements for devices under FIFRA, including specifying that a device is subject to the requirements set forth in Section 7 of FIFRA, 7 U.S.C. § 136e (registration of establishments), and 40 C.F.R. Part 167.

15. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), states that it shall be unlawful for any person in any State to distribute or sell to any person any device which is misbranded.

16. Section 2(q)(1)(D), 7 U.S.C. § 136(q)(1)(D), defines the term “misbranded” to include a device that does not bear the registration number as assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which the device was produced.

17. The term “device” is defined at Section 2(h) of FIFRA, 7 U.S.C. § 136(h) as any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest.

18. The term “pest” is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t) as, in pertinent part, any form of virus, bacteria, or other micro-organism. See also 40 C.F.R. § 152.5(d).

19. The term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

20. The term “to distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

Factual Allegations and Alleged Violations

21. Respondent is, and was at all times relevant to this CAFO, a corporation and, therefore, is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. Respondent is, and was at all times relevant to this CAFO, an “importer” as that term is defined in 19 C.F.R. § 101.1.

AirDoctor AD3000

23. **AirDoctor AD3000** is a device as defined under Section 2(h) of FIFRA, 7 U.S.C. § 136(h).

24. On or about May 24, 2021, Respondent imported approximately 602 units of a device, **AirDoctor AD3000** (Entry Number 178-01824438) from China into the United States.

25. On or about June 19, 2021, Respondent imported approximately 602 units of a device, **AirDoctor AD3000** (Entry Number 178-01827670) from China into the United States.

26. On or about June 26, 2021, Respondent imported approximately 602 units of a device, **AirDoctor AD3000**, (Entry Number 178-01826474) from China into the United States.

27. At the time of each import shipment of **AirDoctor AD3000** identified above, the labeling for the device identified under the import shipment did not bear the EPA Establishment number that was assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which the device was produced.

28. The device **AirDoctor AD3000** was misbranded within the meaning of Section 2(q)(1)(D), 7 U.S.C. § 136(q)(1)(D).

AirDoctor AD5000H

29. **AirDoctor AD5000H** is a device as defined by FIFRA and its regulations.

30. On or about May 25, 2021, Respondent imported approximately 602 units of a device, **AirDoctor AD5000H** (Entry Number 178-01822879) into the United States.

31. On or about May 28, 2021, Respondent imported approximately 602 units of a device, **AirDoctor AD5000H** (Entry Number 178-01823430) into the United States.

32. At the time of each import shipment of **AirDoctor AD5000H** identified above, the labeling for the device identified under the import shipment did not bear the EPA Establishment number that was assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which the device was produced.

33. The device **AirDoctor AD5000H** was misbranded within the meaning of Section 2(q)(1)(D), 7 U.S.C. § 136(q)(1)(D).

34. Under U.S. Customs and Border Protection (CBP) procedures, imported merchandise for which EPA requests an “Intensive” status will result in an “Intensive Exam” message from CBP being sent to the Port Authority, directing that the merchandise at issue be delivered to a designated examination facility or site for actual physical examination. Merchandise so directed remains in CBP custody and may only be moved under bond.

35. On or about July 20, 2021, EPA requested that CBP place the import shipment of **AirDoctor AD3000** (Entry Numbers 178-01826474) under an “Intensive” status for examination.

36. On August 2, 2021, EPA conducted an examination of the device, **AirDoctor AD3000**, within the import-shipment made under entry number 178-01826474, at the Central Examination Station in Channel Distribution Corporation, located at 950 Supreme Drive, Bensenville, Illinois 60106; EPA confirmed that the units of **AirDoctor AD3000** found within the import shipment described above are pesticide devices subject to FIFRA.

37. According to a packing list discovered during the August 2, 2021 examination, the devices were to be delivered to Ideal Living, LLC, a corporation with a place of business located at 14724 Ventura Blvd, Sherman Oaks, CA 91403.

38. The units of the device **AirDoctor AD3000** were being held for distribution/shipment and were offered for delivery, and therefore were “distributed or sold” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

39. On or about August 2, 2021, a representative of Ideal Living, LLC, provided EPA with information that an additional two import-shipments of the device, **AirDoctor AD3000**, and another two import-shipments of another device, **AirDoctor AD5000H**, had been made on the dates set forth above.

40. All the units in each of the import shipments of **AirDoctor AD3000** and **AirDoctor AD5000H** described above were misbranded, because the labeling for each unit of the device did not bear the EPA Establishment number that was assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which the device was produced.

41. Each of the import shipments of **AirDoctor AD3000** and **AirDoctor AD5000H** described above constituted the distribution or sale of a misbranded pesticide device in violation of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F).

42. Each of Respondent’s violations of Section 12(a)(1)(F) of FIFRA subjects Respondent to the issuance of an Administrative Complaint assessing a separate civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each of the five violations.

Counts 1 - 3

43. The preceding paragraphs are incorporated by reference.

44. On May 24, 2021, June 19, 2021 and June 26, 2021, Respondent imported shipments containing a misbranded pesticide device, **AirDoctor AD3000**, and distributed or sold that misbranded device within the meaning of Sections 2(gg) and 2(h) of FIFRA, 7 U.S.C. §§ 136(gg) and 136(h).

45. Each of Respondent's three distributions or sales of the misbranded pesticide device, **AirDoctor AD30000**, was a violation of Section 12(a)(1)(F) of FIFRA.

46. Each of Respondent's three violations of Section 12(a)(1)(F) of FIFRA subjects Respondent to the issuance of an Administrative Complaint assessing a separate civil penalty under Section 14(a) of FIFRA.

Counts 4 - 5

47. The preceding paragraphs are incorporated by reference.

48. On May 25, 2021 and May 28, 2021, Respondent imported shipments containing a misbranded pesticide device, **AirDoctor AD5000H**, and distributed or sold units of that misbranded device within the meaning of Sections 2(gg) and 2(h) of FIFRA, 7 U.S.C. §§ 136(gg) and 136(h).

49. Each of Respondent's two distributions or sales of the misbranded pesticide device, **AirDoctor AD50000H**, was a violation of Section 12(a)(1)(F) of FIFRA.

50. Each of Respondent's two violations of Section 12(a)(1)(F) of FIFRA subjects Respondent to the issuance of an Administrative Complaint assessing a separate civil penalty under Section 14(a) of FIFRA.

Civil Penalty and Other Relief

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

52. 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.

53. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$44,500 (\$8,900 for each of the five violations).

54. Within 30 days after the effective date of this CAFO, Respondent must pay a \$44,500 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
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 "AirDoctor, LLC" and the docket number of this CAFO.

Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

LaDawn Whitehead
Regional Hearing Clerk
whitehead.ladawn@epa.gov

Anna Nguyen
Enforcement Officer
Pesticides and Toxics Compliance Section
nguyen.anna@epa.gov

James J. Cha
Associate Regional Counsel
Office of Regional Counsel
cha.james@epa.gov

55. This civil penalty is not deductible for federal tax purposes.

56. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

57. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

58. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses for their respective representatives: cha.james@epa.gov (attorney for Complainant), and peter@idealliving.com (representative for Respondent).

59. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

60. This CAFO does not 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.

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

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

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

64. 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.
65. Each party agrees to bear its own costs and attorney's fees, in this action.
66. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
AirDoctor, LLC**

AirDoctor, LLC

8.12.21

Date

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

Peter Spiegel, Chief Executive Officer
AirDoctor, LLC


**In the Matter of:
AirDoctor, LLC**

United States Environmental Protection Agency, Complainant

8/20/21

Date

**Harris,
Michael**

 Digitally signed by Harris,
Michael
Date: 2021.08.20
07:18:18 -05'00'

Michael D. Harris, Director
Enforcement & Compliance Assurance Division

In the Matter of:
AirDoctor, LLC
Docket No. FIFRA-05-2021-0024

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.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2021.08.20 14:49:07
-05'00'

Date

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

Consent Agreement and Final Order
In the Matter of: AirDoctor, LLC
Docket Number: **FIFRA-05-2021-0024**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2021-0024**, which was filed on **August 23, 2021**, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Mr. James Cha
cha.james@epa.gov

Copy by E-mail to
Respondent: Mr. Peter Spiegel
AirDoctor, LLC
14724 Ventura Boulevard
Suite 200
Sherman Oaks, California 91403
peter@idealliving.com

Copy by E-mail to
Regional Judicial Officer: Ms. Ann Coyle
coyle.ann@epa.gov

Dated: _____
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5