

HEARINGS CLERK
EPA -- REGION 10

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 Office of Compliance and Enforcement, 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.

2.4. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, and with no admission of liability, the Parties agree to comply with the terms of this Consent Agreement and Final Order (“CAFO”).

III. ALLEGATIONS

3.1. The term “person” is defined at 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.”

3.2. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.15(b) to mean, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.3. 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): (1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide, or (2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or (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 (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; 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.”

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

3.5. The term “pest” is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t), to mean, *inter alia*, “any insect, rodent, nematode, fungus, [or] weed.”

3.6. The term “active ingredient” is defined at Section 2(a) of FIFRA, 7 U.S.C. § 136(a), to mean “an ingredient which will prevent, destroy, repel, or mitigate any pest.”

3.7. The term “distribute or sell” is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to mean “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.”

3.8. 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.”

3.9. The term “label” is defined at Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), to mean “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

3.10. The term “labeling” is defined at Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), to mean “all labels and all other written, printed, or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.”

3.11. In accordance with Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), “a pesticide is ‘misbranded’ if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.”

3.12. The regulation at 40 C.F.R. § 156.10(a)(5) provides examples of statements or representations in the label which constitute misbranding. These examples include, “Claims as to the safety of the pesticide or its ingredients, including statements such as ‘safe,’ ‘nonpoisonous,’ ‘noninjurious,’ ‘harmless’ or ‘nontoxic to humans and pets’ with or without such a qualifying phrase as ‘when used as directed[.]’”

3.13. In accordance with Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), “it shall be 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].”

3.14. In accordance with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), “it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.”

3.15. Respondent is a limited liability company organized under the laws of the State of Nevada with its headquarters in the State of Washington. Therefore, Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.16. Respondent offers a service called “Fulfillment by Amazon” (“FBA”) whereby products are posted on the Amazon.com website for sale by the third-party sellers, stored in Amazon’s fulfillment centers, and Amazon packs, ships, and/or provides logistics services for these products. Therefore, Amazon “distributes” pesticide products within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3.

3.17. For the purposes of this CAFO, ASIN refers to Amazon Standard Identification Numbers that are assigned to each product sold on Amazon.com. Products with the same ASIN are identical in all material respects.

**Distributions of the Unregistered Pesticide Product: 3pcs Cockroach Cockroaches Bugs
Ants Roach Kills Chalk**

3.18. Between January 1, 2013, and November 1, 2015, Respondent distributed, held for distribution, held for shipment, or shipped a product called “3pcs Cockroach Cockroaches

Bugs Ants Roach Kills Chalk” with ASIN B00CDNXYPY (“Cockroach Chalk”) on multiple occasions in the United States.

3.19. At all times relevant to this Consent Agreement, the labeling for Cockroach Chalk stated in Chinese: “This chalk kills cockroaches & ants.” This statement is a pesticidal claim.

3.20. At all times relevant to this Consent Agreement, Cockroach Chalk contained the known pesticide cypermethrin as an active ingredient. Cypermethrin has no known commercially valuable use other than as a pesticide.

3.21. Therefore, at all times relevant to this Consent Agreement, Cockroach Chalk was a pesticide as that term is defined in Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), and 40 C.F.R. § 152.15(a)(1).

3.22. At no time between January 1, 2013, and November 1, 2015, was Cockroach Chalk registered with EPA as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, each occasion that Respondent distributed, held for distribution, held for shipment, or shipped the Cockroach Chalk product alleged in Paragraph 3.18 constitutes the distribution or sale of an unregistered pesticide in violation of FIFRA.

Distributions of the Unregistered and Misbranded Pesticide Product: Miraculous Insecticide Chalk

3.23. Between January 1, 2013, and November 1, 2015, Respondent distributed, held for distribution, held for shipment, or shipped the product “Miraculous Insecticide Chalk” with ASIN B004PT3UD6 (“Miraculous Chalk”) on multiple occasions in the United States.

3.24. At all times relevant to this Consent Agreement, the labeling for Miraculous Chalk stated in part “Kills cockroach and ant effectively.” This is a pesticidal claim.

3.25. At all times relevant to this Consent Agreement, Miraculous Chalk contained the known pesticides cypermethrin and deltamethrin as active ingredients. Cypermethrin and deltamethrin have no known commercially valuable use other than as pesticides.

3.26. Therefore, at all times relevant to this Consent Agreement, Miraculous Chalk was a pesticide as that term is defined in Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), and 40 C.F.R. § 152.15(a)(1).

3.27. At no time between January 1, 2013, and November 1, 2015, was Miraculous Chalk registered with EPA as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, each occasion that Respondent distributed, held for distribution, held for shipment, or shipped the Miraculous Chalk product alleged in Paragraph 3.23 constitutes the distribution or sale of an unregistered pesticide in violation of FIFRA.

3.28. At all times relevant to this Consent Agreement, the labeling for Miraculous Insecticide Chalk stated in part, "Harmless to Human Being and Animal. Safe to Use" and/or "Harmless to human being and pets." These statements are false and misleading.

3.29. Therefore, at all times relevant to this Consent Agreement, the Miraculous Chalk product was misbranded as that term is defined in Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A). Therefore, each occasion that Respondent distributed, held for distribution, held for shipment, or shipped the Miraculous Chalk product alleged in Paragraph 3.23 constitutes the distribution or sale of a misbranded pesticide in violation of FIFRA.

Distributions of the Unregistered Pesticide Product: HUA Highly Effective Cockroach Killer Bait Powder (2 pcs)

3.30. Between January 1, 2013, and March 1, 2016, Respondent distributed, held for distribution, held for shipment, and shipped the product “HUA Highly Effective Cockroach Killer Bait Powder (2 pcs)” with the ASIN B01308ZC42 (“HUA Cockroach Killer”) on multiple occasions in the United States.

3.31. At all times relevant to this Consent Agreement, the labeling for the HUA Cockroach Killer product stated: “Highly effective Cockroach killing Bait Powder” and “COCKROACH KILLER.” These are pesticidal claims.

3.32. At all times relevant to this Consent Agreement, HUA Cockroach Killer contained the known pesticide propoxur as an active ingredient. Propoxur has no known commercially valuable use other than as a pesticide.

3.33. Therefore, at all times relevant to this Consent Agreement, HUA Cockroach Killer was a pesticide as that term is defined in Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), and 40 C.F.R. § 152.15(a)(1).

3.34. At no time between January 1, 2013, and March 1, 2016, was HUA Cockroach Killer registered with EPA as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, each occasion that Respondent distributed, held for distribution, held for shipment, or shipped the HUA Cockroach Killer product alleged in Paragraph 3.30 constitutes the distribution or sale of an unregistered pesticide in violation of FIFRA.

Distributions of the Unregistered and Misbranded Pesticide Product: R.B.T.Z. Safe Highly Effective Roach Killer Bait Powder Indoor (2 pcs)

3.35. Between January 1, 2013, and March 1, 2016, Respondent distributed, held for distribution, held for shipment, or shipped the product "R.B.T.Z. Safe Highly Effective Roach Killer Bait Powder Indoor (2 Pcs)" with the ASIN B013EV0CKE ("R.B.T.Z. Roach Killer") on multiple occasions in the United States.

3.36. At all times relevant to this Consent Agreement, the label on every container of R.B.T.Z. Roach Killer stated: "Highly effective Cockroach killing Bait Powder" and "COCKROACH KILLER." These are a pesticidal claims.

3.37. At all times relevant to this Consent Agreement, R.B.T.Z. Roach Killer contained the known pesticide propoxur as an active ingredient. Propoxur has no known commercially valuable use other than as a pesticide.

3.38. Therefore, at all times relevant to this Consent Agreement, R.B.T.Z. Roach Killer was a pesticide as that term is defined in Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), and 40 C.F.R. § 152.15(a)(1).

3.39. At no time between January 1, 2013, and March 1, 2016, was R.B.T.Z. Roach Killer registered with EPA as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, each occasion that Respondent distributed, held for distribution, held for shipment, or shipped the R.B.T.Z. Roach Killer product alleged in Paragraph 3.35 constitutes the distribution or sale of an unregistered pesticide in violation of FIFRA.

3.40. At all times relevant to this Consent Agreement, the labeling for R.B.T.Z. Roach Killer stated: "CHILD & PET SAFE: Safe to use around children and pets. No worries of

harmful fumes or dangerous poisons and chemicals coming in contact with you and your family.” These statements are false and misleading.

3.41. Therefore, at all times relevant to this Consent Agreement, the R.B.T.Z. Roach Killer product was misbranded as that term is defined in Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A). Therefore, each occasion that Respondent distributed, held for distribution, held for shipment, or shipped the R.B.T.Z. Roach Killer product alleged in Paragraph 3.35 constitutes the distribution or sale of a misbranded pesticide in violation of FIFRA.

Distributions of the Unregistered Pesticide Product: HUA Highly Effective Fly Killing Bait Powder (3 Packs)

3.42. Between January 1, 2013, and March 1, 2016, Respondent distributed, held for distribution, held for shipment, or shipped the product “Green Leaf Powder Fly Killing Bait” with ASIN B015FI7XA6 (“Green Leaf”) on multiple occasions in the United States.

3.43. At all times relevant to this Consent Agreement, the label on every container of Green Leaf contained a graphic with a dead fly and stated: “Powder Fly Killing Bait.” These are pesticidal claims.

3.44. At all times relevant to this Consent Agreement, Green Leaf contained the known pesticide azamethiphos as an active ingredient. Azamethiphos has no known commercially valuable use other than as a pesticide.

3.45. Therefore, at all times relevant to this Consent Agreement, Green Leaf was a pesticide as that term is defined in Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), and 40 C.F.R. § 152.15(a)(1).

3.46. At no time between January 1, 2013, and March 1, 2016, was Green Leaf registered with EPA as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, each occasion that Respondent distributed, held for distribution, held for shipment, or shipped the Green Leaf product alleged in Paragraph 3.42 constitutes the distribution or sale of an unregistered pesticide in violation of FIFRA.

Distributions of the Unregistered Pesticide Product: Ars Mat 60pcs. Refil for ARS Electric Mosquito Killer Convenient, Clean & Smokeless

3.47. Between January 1, 2013, and March 1, 2016, Respondent distributed, held for distribution, held for shipment, or shipped the product called "Ars Mat 60pcs. Refil for ARS Electric Mosquito Killer Convenient, Clean & Smokeless" with the ASIN B00AS7NIFY ("ARS Mat 12") on multiple occasions in the United States.

3.48. At all times relevant to this Consent Agreement, the label on every container of ARS Mat 12 stated "ARS MAT 12, Effective for 12 hours, Contains 60 pcs." In addition, at all times relevant to this Consent Agreement, the labeling for every container of ARS Mat 12 contained a graphic of a dead or dying mosquito with a lightning bolt through its body and stated: "Effective formula for mosquitoes and Aedes." These are pesticidal claims.

3.49. At all times relevant to this Consent Agreement, ARS Mat 12 contained the known pesticides *d*-Allethrin and piperonyl butoxide as active ingredients. *d*-Allethrin and piperonyl butoxide have no known commercially valuable use other than as pesticides.

3.50. Therefore, at all times relevant to this Consent Agreement, ARS Mat 12 was a pesticide as that term is defined in Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), and 40 C.F.R. § 152.15(a)(1).

3.51. At no time between January 1, 2013, and March 1, 2016, was ARS Mat 12 registered with EPA as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, each occasion that Respondent distributed, held for distribution, held for shipment, or shipped the ARS Mat 12 product alleged in Paragraph 3.47 constitutes the distribution or sale of an unregistered pesticide in violation of FIFRA.

Enforcement Authority

3.52. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense occurring after January 12, 2009, through November 2, 2015, and \$19,057 for each offense that occurred after November 2, 2015, and for which penalties are assessed after January 15, 2017.

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. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violations. After considering all of these factors, EPA has determined that an appropriate penalty to settle this action is \$1,215,700 (the "Assessed Penalty").

4.4. For the purposes of settlement, 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: <https://www.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, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Young.teresa@epa.gov

Chad Schulze
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Schulze.chad@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. Respondent agrees to implement a Supplemental Environmental Project ("SEP") consisting of development, deployment, and operation of a publicly available eLearning course on the requirements of FIFRA and associated regulations. Respondent agrees to implement and complete the SEP in accordance with the provisions and schedules described in this Consent Agreement and Attachment A.

4.10. Respondent's deadline to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a *Force Majeure* event. A *Force Majeure* event is defined as any event arising from causes beyond the reasonable control

of Respondent, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents performance of a SEP within the specified time period. A *Force Majeure* event does not include, *inter alia*, increased cost of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.11. Respondent certifies to the truth, accuracy, and completeness of all cost information provided to EPA in connection with EPA's approval of the SEP, and that Respondent in good faith estimates that the cost to implement the SEP is approximately \$1,648,094.

4.12. Respondent also certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Respondent required to perform or develop the SEP by another agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies: that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP; that the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement; and that Respondent will not receive any reimbursement for any portion of the SEP from any other person or entity. For federal income tax purposes, Respondent agrees that it will neither capitalize in inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

4.13. Respondent hereby certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 4.9.

4.14. Respondent shall submit a SEP Completion Report to EPA within 90 days of completion of the SEP. The SEP Completion Report shall contain the following information:

4.14.1. A description of the SEP as implemented;

4.14.2. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and documentation providing evidence of the project's completion and documentation of all SEP expenditures;

4.14.3. A description of any problems encountered and the solutions thereto;

4.14.4. A description of the environmental and public health benefits resulting from implementation of the SEP, including the number of third-party sellers that completed the training;

4.14.5. Directions for accessing the eLearning course, downloadable educational materials, and test;

4.14.6. The information required to be reported in the Annual Reports required by Section VII.e of Attachment A.

4.15. Unless otherwise specified in Attachment A, or instructed in writing by EPA, Respondent shall submit all notices and reports related to the SEP as required by this Consent Agreement by first class mail, overnight mail, email or hand delivery to:

Chad Schulze
U.S. Environmental Protection Agency

Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Schulze.Chad@epa.gov

4.16. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this Consent Agreement until the SEP Completion Report is accepted pursuant to Paragraph 4.17, and Respondent shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this Consent Agreement, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

4.17. Following receipt of the SEP Completion Report described in Paragraph 4.14, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report, and provide Respondent an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraphs 4.18-4.19.

4.18. If Respondent fails to satisfactorily complete the SEP as contemplated by this Consent Agreement and this failure was not caused solely by events which constitute a *Force Majeure* as defined by Paragraph 4.10, then stipulated penalties shall be due and payable by

Respondent to EPA upon demand in accordance with Paragraphs 4.19-4.20. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA.

4.19. If Respondent fails to satisfactorily complete any of the obligations required by Paragraphs 4.9 through 4.21 or Attachment A of this Consent Agreement by the deadlines specified, Respondent shall pay stipulated penalties, upon written demand from EPA, in an amount up to \$1,000 for each day each obligation is not satisfactorily completed.

4.20. Respondent shall pay stipulated penalties within 30 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraphs 4.5 through 4.6. Interest and late charges shall be paid as stated in Paragraphs 4.7 through 4.8.

4.21. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP from the date of the execution of this Consent Agreement shall include the following language:

"This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act."

4.22. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the content of the support or assistance provided to

third-party sellers pursuant to Section V(a) of Attachment A during operation of the SEP, nor the equipment or technology deployed by Respondent in connection with the SEP undertaken pursuant to this Consent Agreement.

4.23. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.8 and 4.19-4.20, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.24. 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.

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

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

4.27. Compliance with this Consent Agreement and the Final Order shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement.

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

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

DATED:

FOR RESPONDENT:

1/26/18



Print Name

Amazon Services LLC

VP Litigation & Regulatory

Print Position

DATED:

FOR COMPLAINANT:

2/8/2018



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

In the Matter of:)
)
)
AMAZON SERVICES LLC,)
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)
)
Seattle, Washington,)
)
)
Respondent.)


DOCKET NO. FIFRA-10-2018-0202

FINAL ORDER

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 13th day of February, 2018.


RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Attachment A: Supplemental Environmental Project

In the Matter of: Amazon Services LLC

Docket No. FIFRA-10-2018-0202

In accordance with Paragraph 4.9 of the Consent Agreement and Final Order ("CAFO") in the caption above, Amazon Services LLC ("Respondent") shall implement a supplemental environmental project ("SEP") consisting of development, deployment, and operation of a publicly available eLearning course, downloadable educational materials, and test on the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") and associated regulations ("eLearning Project").

Purpose: Any person that sells pesticides online, whether on Amazon.com or elsewhere, has an independent obligation to comply with FIFRA (i.e., ensure that pesticides offered for sale on any website do not violate FIFRA). Many online sellers of pesticides lack sufficient knowledge of FIFRA to satisfy their own compliance obligations. Accordingly, one of the primary purposes of the eLearning Project is to educate third-parties that sell pesticides through Amazon.com and other online channels regarding FIFRA compliance obligations.

I. SEP REQUIREMENTS

- a. At a minimum, the eLearning course and downloadable educational materials shall contain content regarding the topics enumerated in Section II.
- b. The eLearning course and test shall contain the functionality elements in Section III.
- c. Unless otherwise agreed to in writing by the parties, the SEP shall be completed in accordance with the schedule in Section IV and operated in accordance with Section V.
- d. Respondent shall track the performance of the SEP in accordance with the requirements of Section VI.
- e. Respondent shall provide the notices and reports required by Section VII.

II. CONTENT REQUIREMENTS

- a. Background on FIFRA and implementing regulations, including key provisions from: Section 2 of FIFRA (definitions), Section 3 of FIFRA (registration requirement), labeling requirements, and restricted use pesticide classifications.
- b. Foreign and "grey market" pesticides.
- c. Key exemptions from the registration requirement laid out in 40 C.F.R. § 152.25 including, minimum risk pesticides and treated articles.
- d. Key import requirements in Section 17 of FIFRA and implementing regulations at 19 C.F.R. § 12.110-12.117.
- e. Potential consequences of noncompliance with FIFRA as prescribed by Section 12 of FIFRA, as well as the key enforcement and penalty provisions in Section 14 of FIFRA.

III. FUNCTIONALITY REQUIREMENTS

- a. The eLearning Project shall contain a testing component that has the following content and functionality:
 - i. The test shall cover the topics discussed in Section II(a)-(e), above.

- ii. The test may use any testing method that allows for objective evaluation of the test taker's understanding of the topics discussed in the eLearning course, for example, multiple choice or fill-in-the-blank.
- b. The eLearning Project shall be publicly available (without a fee for access) via the internet.
- c. The eLearning Project shall be available in English, Spanish, and Chinese.
- d. During the eLearning Project Operation Period described in Section V, below, Respondent shall require Amazon.com sellers to complete the eLearning course and pass the associated test prior to allowing Amazon.com sellers to sell products identified as pesticides. This requirement will not apply to Amazon.com sellers that demonstrate that the seller's existing compliance program is sufficient to ensure products sold via Amazon.com comply with FIFRA. For the purposes of the testing requirement, a passing score shall be equal to or better than 80% correct responses. Existing Amazon.com sellers of products identified as pesticides shall have ninety (90) days from the initial eLearning project deployment date specified in Section IV.b to complete the course and pass the associated test.
- e. For the purposes of this SEP, "Amazon.com sellers" means third-parties that sell or are attempting to sell products identified as pesticides through Amazon.com using a pre-existing seller account or by establishing a new seller account. Third parties may register to become sellers on Amazon.com by following the process described on the Amazon.com website.

IV. SCHEDULE FOR DEVELOPMENT AND DEPLOYMENT

- a. Initial Content Development. Within six months of the effective date of the CAFO, Respondent shall provide EPA with a document that contains the content in English Respondent intends on using to satisfy the requirements of Section II, above, as well as a sample test in English that is designed to satisfy the requirements of Section III, above.
 - i. The content and test provided in accordance with this section shall be deemed acceptable for incorporation into the eLearning Project unless EPA rejects the content, or specific sections of the content, and provides written comments within 60 days of receipt of the draft content from Respondent.
 - ii. If EPA rejects the draft content or specific sections of the draft content in accordance with the Section IV(a)(i), Respondent shall, within 45 days of receiving EPA's rejection, submit a document responding to EPA's rejected content and/or indicating how Respondent has incorporated EPA's comments into the final content.
 - iii. Within 30 days of establishing the content and test in English in accordance with Sections IV(a)(i) and IV(a)(ii), above, Respondent will provide EPA with translations of the content and test from English into Spanish and Chinese. The translator(s) shall be certified by a professional association, such as the American Translation Association, for the applicable language combination and Respondent shall provide documentation of any such professional certifications.

- b. Deployment. Within fourteen (14) months of the effective date of the CAFO, Respondent shall deploy the eLearning Project that complies with Sections II and III, above.
- c. Publication. Within fourteen (14) days of initial deployment in accordance with Section IV(b), above, Respondent shall provide written notice of the eLearning Project to various trade groups associated with the pesticide industry and online retail industry, including Responsible Industry for a Sound Environment (also known as RISE), National Retail Federation (NRF) Digital Council, and National Pesticide Information Center (also known as NPIC). The written notice shall include a brief description of the training, as well as instructions for accessing the training, including the internet link.

V. ELEARING PROJECT OPERATION

- a. Following initial deployment in accordance with Section IV(b), above, Respondent shall operate the eLearning Project for a minimum of 36 consecutive months (the "Operation Period") in accordance with the following:
 - i. At least twice during the duration of the Operation Period, Respondent shall conduct a review of the content developed in accordance with Section II, above, and update the content if necessary to reflect FIFRA statutory, regulatory, or policy changes. The reviews shall be at least 10 months apart and updates (if any) shall be provided to EPA as outlined in Section VII(e)(ii) and (f).
 - ii. Throughout the duration of the Operation Period, Respondent shall provide technical support to users of the eLearning Project to address issues related to navigating the training modules or accessing the downloadable educational materials.
 - iii. Consistent with the purpose statement above and based on the mandatory requirements imposed on Amazon.com sellers to complete the eLearning course and test, Respondent shall provide support services to Amazon.com sellers throughout the duration of the Operation Period to answer questions about the training requirement, to address difficulties users encounter with the training or test, to educate sellers on the requirements to sell pesticides on Amazon.com, to address product-related concerns, to provide support to sellers that have abandoned the training, and to receive feedback regarding the eLearning Course and test (and analyze it to improve the efficacy of same). Such support may be provided via email, phone, or other means.
 - iv. Persons providing seller support services pursuant to Section V(a)(iii) shall (1) be knowledgeable of the Amazon listing requirements for products identified as pesticides, (2) be knowledgeable of the eLearning Project, and (3) be knowledgeable regarding the content of the FIFRA eLearning Project sufficient to address questions or concerns related to the training.
 - v. Respondent shall operate the eLearning Project at all times throughout the Operation Period except for periods of maintenance and periodic updates.

VI. TRACKING PERFORMANCE

- a. Throughout the duration of the Operation Period required by Section V, Respondent shall track and generate records of the following:
 - i. The number of times the eLearning course is viewed;
 - ii. The number of times the test is taken;
 - iii. The number of Amazon.com sellers of products identified as pesticides that complete the course and pass the associated test;
 - iv. A list of Amazon.com sellers Respondent determined, pursuant to Section III.d, above, are not required to take the eLearning course or pass the associated test.
 - v. The number of times the educational materials are downloaded.

VII. NOTICES AND REPORTING

- a. Unless otherwise specified herein, the recipients for EPA and Respondent of all correspondence under this Attachment A, including notices and reports, shall be:

Chad Schulze
Office of Compliance and Enforcement
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, Seattle, Washington 98101
Mail Stop: OCE-101
Schulze.Chad@epa.gov

Corporation Service Company
Registered Agent for: Amazon Services LLC
300 Deschutes Way SW STE 304
Tumwater, WA 98501
FIFRASEP@amazon.com

- b. Transmittal of correspondence required by this Attachment A may be by either electronic mail or physical mail.
- c. Within fourteen (14) days of deploying the eLearning Project as outlined in Section IV(b), Respondent shall provide EPA with a notice confirming that the step in that section has been completed. Respondent shall include in the notice of deployment directions for accessing the eLearning Project.
- d. Within fourteen (14) days of providing the notice of publication required under Section IV(c), Respondent shall provide EPA with a notice confirming that the step in that section has been completed.
- e. Annual Reports. Within thirteen (13) months of the eLearning deployment required by Section IV(b), and again thirteen (13) months after that date, Respondent shall submit an annual report for the previous twelve-month (12) period to EPA which contains the following:
 - i. Directions for accessing the eLearning course, downloadable educational materials, and test;
 - ii. A list of changes (if any) Respondent made or will make to the training content in accordance with Section V(a) in addition to an explanation of each change;

- iii. The data tracked pursuant to Section VI, above.
- f. EPA Review of Content Changes. Respondent may integrate any changes to the content of the eLearning Project that Respondent lists in the annual report pursuant to Section VII(e)(ii). If EPA rejects the changes and/or proposed changes within sixty (60) days of receipt of the annual report, Respondent shall, within forty-five (45) days of receiving EPA's rejection, submit a document responding to EPA's rejected content and/or indicating how Respondent has incorporated EPA's comments.
- g. Respondent shall submit a SEP Completion Report to EPA in accordance with the requirement and schedule in paragraph 4.14 of the Consent Agreement.

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Amazon Services LLC, Docket No.: FIFRA-10-2018-0202**, 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 to:


Brett S. Dugan
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Corporation Service Company
Registered Agent for: Amazon Services LLC
300 Deschutes Way SW STE 304
Tumwater, Washington 98501

Laura M. Duncan
Marten Law PLLC
1191 2nd Avenue, Suite 2200
Seattle, WA 98101

DATED this 14 day of February, 2018.


TERESA YOUNG
Regional Hearing Clerk
EPA Region 10