

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

**FILED**

Jul 08, 2024

3:26 pm

U.S. EPA REGION 8  
HEARING CLERK

**IN THE MATTER OF:**

**PURE MAINTENANCE OF  
COLORADO, LLC**  
6106 West 55th Avenue  
Arvada, Colorado 80002

**Respondent.**

Docket No. FIFRA-08-2024-0052

**CONSENT AGREEMENT**

**I. INTRODUCTION**

1. This is an administrative penalty assessment proceeding pursuant to 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 of Practice), as codified at 40 C.F.R. part 22.
2. The parties to this proceeding are the authorized representative of the U.S. Environmental Protection Agency, Complainant, and Pure Maintenance of Colorado, LLC, Respondent.
3. Respondent is a limited liability company organized under the laws of the state of Colorado.
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondents agree to comply with the terms of this Agreement.

**II. JURISDICTION**

5. This Agreement is issued under the authority vested in the Administrator of the EPA by section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a)(1). The undersigned EPA official has been duly authorized to institute this action.
6. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from a regional judicial officer ratifying this Agreement. The final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

**III. GOVERNING LAW**

7. 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.”
8. 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 microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living

animals) which the Administrator declares to be a pest under section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).”

9. 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[.]”
10. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines the term “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”
11. Section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), defines the term “labeling” as “all labels and all other written, printed, or graphic matter...accompanying the pesticide or device at any time.”
12. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” 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. The term does not include the holding or application of *registered pesticides* or use dilutions thereof by any applicator who provides a service of controlling pests without delivering any unapplied pesticide to any person so served.” Emphasis added.
13. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that 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 136a of FIFRA.
14. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), provides that it shall be unlawful for any person in any state to use any registered pesticide in a manner inconsistent with its labeling.
15. The Administrator of the EPA may assess a civil penalty of up to \$24,255 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA for each offense that occurred after November 2, 2015. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); 40 C.F.R. part 19; and the Civil Monetary Penalty Inflation Adjustment Rule at 88 Fed. Reg. 89309, 89312 (December 27, 2023).

#### IV. ALLEGATIONS OF FACTS AND LAW

16. At all times relevant to this Agreement, Respondent was a “person” as that term is defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
17. At all times relevant to this Agreement, Respondent operated a facility located at 4885 Marshall Street, Suite 106, Wheat Ridge, Colorado 80033 (Facility).
18. On July 29, 2020, the EPA conducted an inspection at the Facility (Inspection).
19. During the Inspection, the EPA observed the application of pesticides and collected statements regarding operations, invoices, manuals, sterilization certificates, and photographs of products and equipment, and records of purchases from Pure Maintenance, LLC, in Layton, Utah.
20. During the Inspection, the EPA observed bottles labeled with the name InstaPURE and EPA Registration Number 70299-19-95371, in which the registrant product is the pesticide Sanidate 5.0.

21. The EPA registered label for InstaPURE includes the following directions for use:
  - a. "This product may be used to clean, disinfect and deodorize inanimate hard, non-porous surfaces in general commercial environments."
  - b. "Apply solution with mop, cloth, sponge, brush, scrubber, or coarse spray device or by soaking so as to wet all surfaces thoroughly. Treated surfaces must remain wet for ten (10) minutes."
  - c. "Handlers who may be exposed to the product through mixing, loading, application, or other tasks must wear: coveralls over long-sleeved shirt and long pants, rubber gloves, chemical resistant footwear plus socks, and protective eyewear."
  - d. "Pre-clean heavily soiled areas. Apply use solution to hard, non-porous surfaces using a sponge, brush, cloth, mop, by immersion or coarse spray device. For spray applications, spray 6-8 inches from surface. Do not breathe spray. Treated surfaces must remain visibly wet for ten (10) minutes."
22. InstaPURE is intended to be used as a pesticide, and thus is a "pesticide" within the meaning of section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.15.
23. As part of the Inspection, on July 29, 2020, the EPA observed Respondent's application of two pesticides, InstaPURE and EverPURE, at The Reflections at Cherry Creek Apartment Complex main office and maintenance shop located at 14012 East Tufts Drive, Aurora, Colorado 80015.
24. During Respondent's application, the EPA observed Respondent's application of InstaPURE and EverPURE wherein the Respondent applied the pesticides without coveralls or a long-sleeved-shirt. Respondent applied the InstaPURE to porous surfaces, including cardboard and cloth bags and failed to clean the heavily soiled room prior to application. In addition, Respondent's spray (or fog) was not 6-8 inches from the surface areas.
25. Therefore, Respondent used a registered pesticide, InstaPURE, in a manner inconsistent with its labeling, in violation of FIFRA section 12(a)(1)(G), 7 U.S.C. § 136j(a)(1)(G).
26. During the Inspection, the EPA observed bottles labeled with the name EverPURE.
27. The invoices for EverPure include the following language "EPA-verified 90- days of microbial protection with application of EverPURE."
28. On or about May 27, 2020, Respondent's website at <https://puremaintenanceco.com/> included the following claims:
  - a. "To give additional peace of mind, we follow our InstaPURE dry fog application with an EPA-registered N List product wipedown, then cap it all off with the application of EverPURE, a low-level disinfectant with antimicrobial properties. We call this process the "VIRUS SCRUB.""
  - b. "Both InstaPURE and EverPURE are sufficient to denature other enveloped and non-enveloped viruses like H1N1, the avian flu, and noroviruses, and they require very little dwell time."

29. EverPURE was intended to be used as a pesticide, and thus is a “pesticide” within the meaning of section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.15.
30. EverPURE was not registered as a pesticide pursuant to section 3 of FIFRA.
31. Based on the invoices and other information the EPA collected and reviewed, between January 9, 2020, and July 14, 2020, Respondent sold or distributed an unregistered pesticide, EverPURE, on at least 11 separate occasions.
32. Therefore, Respondent sold or distributed an unregistered pesticide, EverPURE, in violation of FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A).

## **V. ALLEGED VIOLATIONS OF LAW**

33. Based on the facts set forth in section IV of this Agreement, the EPA finds Respondent violated FIFRA section 12(a)(1)(G), 7 U.S.C. § 136j(a)(1)(G), because Respondent used a registered pesticide in a manner inconsistent with its labeling.
34. Based on the facts set forth in section IV of this Agreement, the EPA finds Respondent violated FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), because Respondent distributed or sold an unregistered pesticide.

## **VI. TERMS OF AGREEMENT**

35. For the purposes of this proceeding, Respondent:
  - a. admits the facts set out in paragraph 3 of this Agreement;
  - b. admits the jurisdictional allegations in section II of this Agreement;
  - c. neither admits nor denies the alleged factual allegations in sections IV and V of this Agreement;
  - d. consents to the assessment of a civil penalty as stated below;
  - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement action;  
and
  - f. waives any right to contest the allegations in this Agreement and to appeal any final order approving this Agreement.
36. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the EPA to assess a civil penalty in this matter.
37. Based on the allegations in sections IV and V above, and having considered the appropriateness of the assessed penalty to Respondent’s size of businesses, the effect on Respondent’s ability to continue in business, and the gravity of the violation, as required by section 14(a)(4) of FIFRA, 7

U.S.C. § 1367(a)(4), the Complainant has determined the civil administrative penalty amount agreed upon below is appropriate to settle this matter.

38. Penalty Payment. Respondent agrees to pay a civil penalty in the amount of **\$6,740** (Assessed Penalty) within 30 calendar days of the date the Regional Hearing Clerk files the final order ratifying this Agreement (Filing Date).

39. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

40. When making a payment, Respondent shall:

- a. identify every payment with Respondent's name and the docket number of this Agreement,
- b. concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Attn: Christine Tokarz  
U.S. Environmental Protection Agency, Region 8  
via electronic mail to: [tokarz.christine@epa.gov](mailto:tokarz.christine@epa.gov)

and

Attn: Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 8  
via electronic mail to: [R8\\_Hearing\\_Clerk@epa.gov](mailto:R8_Hearing_Clerk@epa.gov)

- c. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order and Respondent's name.

41. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS standard underpayment rate. Any lower rate would fail to provide Respondent adequate incentive for timely payment.

- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts including, but not limited to, attorneys' fees and costs of handling collection. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
  - c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.
42. Late Penalty Actions. In addition to the amounts described in the prior paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
  - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, subparts C and H.
  - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
  - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
43. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
44. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes. *See* Internal Revenue Code, 26 U.S.C. § 162(f).
45. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the facility. Any change in ownership or corporate control of Respondents, including but not limited to, any transfer

of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.

46. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.
47. The parties' consent to service of a final order by e-mail at the following valid e-mail addresses: Laurianne Jackson, Senior Enforcement Attorney, at [jackson.laurianne@epa.gov](mailto:jackson.laurianne@epa.gov) (for Complainant), and Ryan Taylor, at [ryan@puremaintanance.com](mailto:ryan@puremaintanance.com) (for Respondent).
48. Except as qualified by paragraph 41 above, each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
49. Respondents specifically waive any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

## **VII. EFFECT OF AGREEMENT**

50. In accordance with 40 C.F.R. § 22.18(c), compliance with the final order approving this Agreement resolves Respondent's liability only for federal civil penalties for the violations specifically alleged above.
51. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
52. Nothing herein shall be construed to limit the power of the EPA to pursue injunctive or other equitable relief, or criminal sanctions, for any violations of law or to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
53. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves all its legal and equitable rights.

Consent Agreement In the Matter of PURE MAINTENANCE OF COLORADO, LLC.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Cobb, Section Supervisor  
Toxics and Pesticides Enforcement Section  
Enforcement and Compliance Assurance Division  
For the Complainant

**Respondents  
PURE MAINTENANCE OF COLORADO, LLC**

Date: 6/21/2024

By: 

Printed Name: Ryan Taylor