

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

FILED

Aug 22, 2024

10:45 am

**U.S. EPA REGION 3
HEARING CLERK**

In the Matter of:

R. Lee Payne & Son, Inc.
571-A James Madison Highway
Culpeper, VA, 22701

Respondent.

:
:
: **U.S. EPA Docket No. FIFRA-03-2024-0085**
:
: **Proceeding under Section 14(a) of the Federal**
: **Insecticide, Fungicide and Rodenticide Act, 7**
: **U.S.C. § 136l(a)**
:

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement Compliance and Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and R. Lee Payne & Son, Inc. (“Respondent”) (collectively the “Parties”), pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA” or the “Act”) authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the Act for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(1).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. At all times relevant to the violations alleged herein, Respondent was and is a Virginia corporation with its principal place of business located at 571-A James Madison Highway Culpeper, VA, 22701.
13. 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."
14. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to the assessment of civil penalties for the violations alleged herein.
15. 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."
16. 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)].”
17. Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), defines an “antimicrobial pesticide” as “(i) a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or (ii) protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.”
 18. 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.” *See also* 40 C.F.R. § 152.3.
 19. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers;” and defines “labeling” as “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”
 20. Pursuant to Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), “[a] pesticide is misbranded if . . . : (E) any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or (F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment; .”
 21. Pursuant to Section 2(q)(2) of FIFRA, 7 U.S.C. § 136(q)(2), “A pesticide is misbranded if . . . (C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing – (iii) the net weight or measure of the content”
 22. Pursuant to the labeling requirements of 40 C.F.R. §156.10(a)(1), “[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 the following: (iii) The net contents as prescribed in paragraph (d) of this section; and (viii) The directions for use as prescribed in paragraph (i) of this section.
 23. Pursuant to 40 C.F.R. §156.10(d)(2), “. . . the net content statement shall be in terms of liquid measure at 68°F (20°C) and shall be expressed in conventional American units of

- fluid ounces, pints, quarts, and gallons.”
24. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any State to distribute or sell to any person “any pesticide which is adulterated or misbranded.”
 25. 40 CFR §156.10(i)(2)(ix) provides that the label on a pesticide product must have specific directions concerning the storage, residue removal and disposal of pesticides and pesticide containers.
 26. Respondent produces and sells the registered pesticide “Liquid Clear Shock”, EPA Reg. No. 550-198-68776 (“Liquid Clear Shock”).
 27. On June 25, 2021, acting as an authorized FIFRA inspector for the EPA, the Virginia Department of Agriculture and Consumer Services (“VDACS”) conducted an announced, routine, federal FIFRA producer establishment inspection (“PEI”) at R. Lee Payne & Son, Inc.’s manufacturing facility (EPA Est. No. 68776-VA-001), located at 571-A James Madison Highway, Culpeper, VA, 22701.
 28. EPA provided Notice of Inspection (EPA Form 3540-2) to an authorized representative for R. Lee Payne & Son, Inc.
 29. On July 14, 2022, VDACS conducted a follow-up, unannounced federal FIFRA “for cause” PEI at R. Lee Payne & Son, Inc. on behalf of EPA pursuant to Section 8 of FIFRA, 7 U.S.C. § 136f, in connection with the suspected sale/distribution of a misbranded pesticide. During the July 14, 2022 PEI, the VDACS inspector collected documents, photographs, samples and other relevant information related to R. Lee Payne & Son, Inc.’s labeling for their product, Liquid Clear Shock.
 30. During the July 14, 2022 PEI, an authorized representative of R. Lee Payne & Son, Inc. explained that the current label had been in use since April 2022. A pre-April 2022 bin label for Liquid Clear Shock was collected during the June 25, 2021 PEI and an April 2022 bin label was collected during the July 14, 2022 PEI. EPA believes that the pre-April 2022 label is misbranded under FIFRA Section 2(q)(F) in that it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment. Specifically, the pre-April 2022 label was missing a complete “STORAGE AND DISPOSAL” statement. The pre-April 2022 label that was collected during the June 25, 2021 PEI was missing the complete Container Handling instructions.
 31. Additionally, EPA determined that the label was missing the net contents, as required by 40 CFR 156.10(a)(1)(iii).
 32. Finally, the EPA Accepted Labels dated October 14, 2020 and February 11, 2022 state: “For Institutional and Industrial Uses. Do Not Store In or About Dwellings.” The pre-

April 2022 bin label does not have this statement. Sales records show that this pesticide was sold 768 times from 7/13/21 to 3/31/2022 with the misbranded label. Misbranded pesticides are prohibited from sale and distribution in the U.S.; therefore, the EPA believes that R. Lee Payne & Son, Inc. has sold or distributed Liquid Clear Shock in violation of FIFRA § 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E).

33. Misbranded pesticides are prohibited from sale and distribution in the U.S.; therefore, the EPA believes that R. Lee Payne & Son, Inc. has sold or distributed Liquid Clear Shock in violation of FIFRA § 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E).
34. On 3/22/2023, EPA issued Respondent a Notice of Potential Violation and Opportunity to Confer (“NOPVOC”).

COUNTS 1-768
Failure to Comply with FIFRA Labeling Requirements

35. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
36. Based upon the records (documents, photographs, samples) and other relevant information collected from the Respondent during the June 25, 2021 and July 14, 2022 PEI, the EPA determined that Respondent made 768 sales/distributions of the EPA registered pesticide “Liquid Clear Shock” (EPA Reg. No. 550-198-68776) during the period from 7/13/21 to 3/31/22 with misbranded labels, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that the product labels were missing a complete Directions for Use and the net weight contents.
37. Respondent’s 768 sales/distributions of its Liquid Clear Shock (EPA Reg. No. 550-198-68776) pesticide product, as identified in Paragraph 36 above, constitute Seven Hundred and Sixty-Eight 768 separate violations of the misbranding prohibitions of Section 2(q) of FIFRA, 7 U.S.C. § 136(q), and of the labeling requirements of 40 C.F.R. §156.10(a)(1).
38. Respondent’s 768 sales/distributions of its Liquid Clear Shock (EPA Reg. No. 550-198-68776) pesticide product, as identified in Paragraph 37, above, also constitute Seven Hundred and Sixty-Eight 768 unlawful acts, in contravention of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
39. In failing to comply with 40 C.F.R. § 156.10(a)(1), Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is subject to the assessment of penalties under Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

CIVIL PENALTY

40. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of Sixty-Five Thousand Dollars (\$65,000), which Respondent shall be liable to pay in accordance with the terms set forth below.
41. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), including, the following: the size of the business of the person charged, the effect of the person’s ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s *FIFRA Enforcement Response Policy* (December 2009) which reflects the statutory penalty criteria and factors set forth Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.
42. Respondent agrees to pay a civil penalty in the amount of \$65,000 (“Assessed Penalty”) within thirty (30) days of the Effective Date of this Consent Agreement and Final Order.
43. 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>.
44. When making a payment, Respondent shall:
 - a. Identify every payment with Respondent’s name and the docket number of this Consent Agreement, **FIFRA-03-2024-0085**,
 - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve Proof of Payment simultaneously **by email** to the following person(s):

Dennis M. Abraham
Sr. Assistant Regional Counsel
abraham.dennis@epa.gov,

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov,

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

“Proof of Payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or 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 appropriate docket number and Respondent’s name.

45. 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 any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.
 - a. Interest. Interest begins to accrue from the Effective 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.
 - c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days.

46. 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 Consent 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 pursuant to 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, 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, 40 C.F.R. § 13.17.
 - d. Request that the Attorney General bring a civil action in the appropriate district court to recover the amount outstanding pursuant to 7 U.S.C. § 136l(a)(5).

47. 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.
48. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
49. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
50. The parties consent to service of the Final Order by e-mail at the following valid email addresses: abraham.dennis@epa.gov (for Complainant) and livins@hirschlerlaw.com (for Respondent).
51. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the IRS annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, **including** amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:
 - a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
 - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
 - c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at henderson.jessica@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of the Final Order per Paragraph 59; and
 - ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

GENERAL SETTLEMENT CONDITIONS

52. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
53. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

54. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

55. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver,

suspension, or modification of the requirements of the FIFRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

56. This Consent Agreement and Final Order resolves only EPA’s claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

57. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

58. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

59. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: R. Lee Payne & Son, Inc.

Date: 8-7-24

By: 
Name
President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Dennis M. Abraham
Senior Assistant Regional Counsel
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103

FILED

Aug 22, 2024

10:46 am

U.S. EPA REGION 3
HEARING CLERK

In the Matter of:

R Lee Payne & Son, Inc.
571-A James Madison Highway
Culpeper, VA, 22701

Respondent.

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: U.S. EPA Docket No. FIFRA-03-2024-0085
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: Proceeding under Section 14(a) of the Federal
: Insecticide, Fungicide and Rodenticide Act, 7
: U.S.C. § 136l(a)

FINAL ORDER

Complainant, the Director of the Enforcement Compliance and Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, R. Lee Payne & Son, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *FIFRA enforcement Response Policy (December 2009)*, and the statutory factors set forth in Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a)(4).

NOW, THEREFORE, PURSUANT TO Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **SIXTY-FIVE THOUSAND DOLLARS (\$65,000)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Federal Insecticide, Fungicide and Rodenticide Act, and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____

By: _____

[Digital Signature and Date]

Joseph J. Lisa

Regional Judicial and Presiding Officer

U.S. EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	:	
	:	
R. Lee Payne & Son, Inc.	:	U.S. EPA Docket No. FIFRA-03-2024-0085
571-A James Madison Highway	:	
Culpeper, VA, 22701	:	Proceeding under Section 14(a) of the Federal
	:	Insecticide, Fungicide and Rodenticide Act, 7
Respondent.	:	U.S.C. § 136l(a)

CERTIFICATE OF SERVICE

I certify that the foregoing *Consent Agreement and Final Order* was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Consent Agreement and Final Order*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Susan Payne
R. Lee Payne & Son, Inc.
571-A James Madison Highway
Culpeper, VA, 22701
susie@paynepools.com

Copies served via email to:

Dennis M. Abraham
Senior Assistant Regional Counsel
U.S. EPA, Region III
abraham.dennis@epa.gov

Holly Raguza
Compliance Officer
U.S. EPA, Region III
Raguza.holly@epa.gov

Date: _____

[Digital Signature and Date]

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III