UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 04 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ladd H. Fassett, Esq.
Fassett Anthony & Taylor P.A.
1325 West Colonial Drive
Orlando, Florida 32804

Re: Zimek Technologies, LLC
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2013-3006(b)

Dear Mr. Fassett:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer your client to Seetion V of the CAFO for penalty information and payment requirements. To ensure proper processing, your client's name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of their potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should your client have any questions about this matter or their compliance status in the future, please contact Ms. Dawn Johnson of the EPA Region 4 staff at (404) 562-9017.

Sincerely,

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures
cc: George Hayslip, FDACS
State File No. 108-177-3094

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2013 APR -4 PM 2:29
HEARING CLERK

In the Matter of:	)	
	)	
Zimek Technologies, LLC	)	**Docket No.:** FIFRA-04-2013-3006(b)
	)	
Respondent.	)	
	)	

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136*l*(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency (EPA), Region 4. Respondent is Zimek Technologies, LLC.

2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as

the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Dawn Johnson
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9017.

5. Respondent is Zimek Technologies, LLC, a Florida limited liability company, located at 5043 Winwood Way, Orlando, Florida 32819.

6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

III. Specific Allegations

7. On or about May 12, 2011, authorized representatives of the EPA conducted an inspection at Respondent's storage facility located at 1155 Providence Road, Brandon, Florida 33511.

8. During inspection, Zimek QD (EPA Reg. No. 70385-6-81632), Vital Oxide (EPA Reg.

No. 82972-1), Zimek D&I Plus (EPA Reg. No. 70385-3-81632), and Sporicidin Brand Disinfectant Solution (EPA Reg. No. 8383-3) were identified as being sold and/or distributed by the Respondent for use in the Zimek Micro-Mist Decontamination System, which Zimek describes as a misting machine.

9. Zimek QD, Vital Oxide, Zimek D&I Plus, and Sporicidin Brand Disinfectant Solution are pesticides as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

10. Zimek QD, Vital Oxide, Zimek D&I Plus, and Sporicidin Brand Disinfectant Solution are antimicrobial pesticides as defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), to include a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.

11. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 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. § 136w(c)(1).

12. During the aforementioned inspection, EPA obtained evidence that Respondent had "distributed or sold" the pesticides listed in Paragraph 8 above as the term "to distribute or sell" is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), which includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.

13. Under Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), it is unlawful for any

person to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with the pesticide's registration.

14. As part of the distribution and sale of the pesticides listed in Paragraph 8 above, Respondent made claims regarding their method of application in its advertising brochures and on its website that substantially differed from those accepted in connection with registration. Specifically, Respondent claimed that these pesticides could be applied to disinfect the interior of fire rescue and EMS vehicles, law enforcement, corrections, and other emergency vehicles, public transportation vehicles, school buses, personal-use vehicles, marine vessels, and aircraft via fogging or misting through the Zimek Micro-Mist Decontamination System. However, application of these pesticides to the interior of such vehicles, vessels, and aircraft through fogging or misting using the Zimek Micro-Mist Decontamination System or any other fogging or misting equipment was not approved by the EPA as part of the registration process for each pesticide, nor did the approved labels allow for such application.

15. On September 6, 2011, EPA approved an amendment to the Vital Oxide label stating that "Vital Oxide can be applied by fogging or misting to disinfect hard, nonporous surfaces as an adjunct to regular manual cleaning and disinfecting. Vital Oxide is recommended for use in fogging operations as a supplemental measure either before or after regular cleaning and disinfecting procedures. Apply by fogging or misting until surface is moist using equipment manufacturers directions for use." Following this label amendment, Vital Oxide may be applied to the areas of use identified in the label via fogging or misting using fogging or misting equipment, including the Zimek Micro-Mist

Decontamination System, as described by Zimek, to disinfect hard, nonporous surfaces as an adjunct to regular manual cleaning and disinfecting provided that such application conforms to all label requirements. None of the other pesticides listed in Paragraph 8 have been authorized for application in vehicles through fogging or misting.

16. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), on at least one occasion and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136*l*.

17. During the aforementioned inspection, EPA obtained evidence that Respondent had sold and distributed Zimek QD with a product label that contained the incorrect registration number. On September 11, 2008, the registration number was transferred from 70263-6 to 70385-6. Zimek became a supplemental distributor of this product on March 12, 2009.

18. Pursuant to Section 2(q)(1)(A) of FIFRA, 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.

19. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide that is misbranded.

20. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least one occasion through the sale and distribution of Zimek QD with a label bearing the incorrect registration number and is therefore subject to the assessment of civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a).

21. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any person who is a producer to violate any of the provisions of FIFRA Section 7.

22. Respondent is a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

23. Section 7 of FIFRA requires a producer to register the establishment where it produces a pesticide and to submit annual reports containing specific production information. Respondent produced pesticides at an establishment located 251 78th Street, Tampa, Florida 33619 and registered as EPA establishment number 081632-FL-001. Pursuant to 40 C.F.R. § 167.85(d), the producer must submit an annual report on or before March 1st of each year, even if the producer has produced no pesticidal product for that reporting year.

24. Respondent failed to submit its 2010 pesticides production report on or before the March 1, 2011, due date. Respondent produced Zimek QD and Zimek D&I Plus at the aforementioned establishment during the 2010 reporting year. Therefore, Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) and is subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136*l*.

25. Section 14(a) of FIFRA, 7 U.S.C. §136*l*(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.

26. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136*l*(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.

27. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136*l*(a)(4), the EPA proposes to assess a total civil penalty of **TWENTY-FIVE THOUSAND DOLLARS ($25,000)** against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a), may be assessed by Administrative Order.

IV. Consent Agreement

28. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.

29. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.

30. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.

31. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.

32. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

33. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

34. Respondent is assessed a civil penalty of **TWENTY-FIVE THOUSAND DOLLARS ($25,000)** which shall be paid within 30 days from the effective date of this CAFO.

35. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to

the following address:

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

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

36. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

Dawn Johnson
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

37. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

38. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the

effective date of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

39. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

40. This CAFO shall be binding upon the Respondent, its successors and assigns. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

The remainder of this page is intentionally left blank.

Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: **Zimek Technologies, LLC**
Docket No.: **FIFRA-04-2013-3006(b)**

By: _____ (Signature) Date: March 18, 2013

Name: Kurt E. Grosman (Typed or Printed)

Title: President (Typed or Printed)

Complainant: **U.S. Environmental Protection Agency**

By: _____ Date: 3.29.13
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 4 day of April 2013.

_____
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order In the Matter Zimek Technologies, LLC, Docket Number: FIFRA-04-2013-3006(b), to the addressees listed below:

Mr. Ladd H. Fassett, Esq. (via Certified Mail, Return Receipt Requested)
Fassett Anthony & Taylor P.A.
1325 West Colonial Drive
Orlando, Florida 32804

Dawn Johnson (via EPA's internal mail)
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Eric Triplett (via EPA's internal mail)
Assistant Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Date: 4-4-13

Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9511