



STATE OF WASHINGTON
DEPARTMENT OF AGRICULTURE
P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

NOC No.: PR-08-0001-20

2/11/2020

AC2T Inc dba Spartan Mosquito
Joshua A. Mars, Attorney-in-Fact
P.O. Box 18556
Hattiesburg, MS 39404

Re: Application for Re-Registration of Pesticides

Dear Joshua A. Mars:

WSDA has reviewed your Application for Re-Registration of Pesticides (dated 11/20/2019) for **Spartan Mosquito Eradicator**. We also understand that the Environmental Protection Agency (EPA) issued a Notice of Warning (NOW) on August 8, 2018 and explained that this product does not appear to meet all conditions for exemption from registration under Section 25(b) of FIFRA. After reviewing the product labeling and information from other states and EPA, WSDA has determined that it does not meet all of the requirements of Chapters 15.58 RCW and 16-228 WAC. This Notice of Correction (NOC) applies to **Spartan Mosquito Eradicator**.

Please read the attached notice carefully and send to WSDA the requested information by **March 10, 2020**. Failure to do so will result in denial of the application for pesticide re-registration. If you cannot meet this deadline, you may withdraw the application for this product and reapply when you are able to submit a complete application for an eligible pesticide product. Please note that you will not receive a refund if you withdraw your application for this product. You have the option to submit a request to EPA to determine if this product meets the conditions for exemption from FIFRA regulation (see <https://www.epa.gov/pria-fees/m009-pria-fee-category>).

The cited statutes for Chapters 15.58 RCW and 16-228 WAC are available at <http://app.leg.wa.gov/RCW/default.aspx?cite=15.58> and <http://apps.leg.wa.gov/WAC/default.aspx?cite=16-228>. According to RCW 43.05.100 (2), a Notice of Correction is not a formal enforcement action, is not subject to appeal, and is a public record.

If you have any questions regarding the information in this notice, please contact me at the above address, or by telephone at 360-902-2049, or by e-mail at sfoss@agr.wa.gov.

Sincerely,

PESTICIDE MANAGEMENT DIVISION

Steve L. Foss, Program Specialist

Enclosures

cc: Gary Vetter, WSDA Registration Supervisor
Scott Nielsen, WSDA Compliance Case Review
Joe Varco, EPA OECA

CERTIFICATE OF SERVICE

I certify that I caused to be mailed a copy of these documents to the within-named interested parties via

FIRST CLASS MAIL

at their respective addresses, postage prepaid, on
2/11/2020

Representative,
Washington State Department of Agriculture



Washington State Department of Agriculture
Pesticide Management Division

TRACKING NO.: PR-08-0001-20
WSDA REP: Steve L. Foss

NOTICE OF CORRECTION

WSDA PESTICIDE COMPANY NUMBER 997470

AC2T Inc dba Spartan Mosquito
P.O. Box 18556
Hattiesburg, MS 39404

***TO BE MAILED**

2/11/2020

CONDITIONS NOT IN COMPLIANCE (RCW 15.58.060 , WAC 16-228-1400)	REQUIRED CORRECTIVE ACTION BY MARCH 10, 2020
<p>Failure to Meet Condition 6: Labels must not include any false or misleading statements, as described in 40 CFR 156.10(a)(5)(i) through (viii) at https://www.epa.gov/minimum-risk-pesticides/conditions-minimum-risk-pesticides and as specified in WSDA's Guidance for Registration and Labeling of Section 25(b) Minimum Risk Pesticides at https://agr.wa.gov/departments/pesticides-and-fertilizers/pesticides/section-25b-products.</p>	<p>Delete all false or misleading claims on the label, advertisements, and websites (including all distributor sites such as Amazon, Walmart, Lowes, etc.) and amend exaggerated claims to be in compliance with label requirements and guidelines.</p>
<p>Efficacy data is required by WSDA for mosquitoes, ticks, and bedbugs, which are pests that may affect public health of humans. The label for this product includes claims to control mosquitoes. Each Spartan Mosquito Eradicator trap has a net contents of 1.414 oz with sodium chloride as the only active ingredient that should be diluted with about 13.5 fl oz of warm water. Applications for Re-Registration of Pesticides are incomplete when efficacy data has been requested to substantiate claims, including the following found online at https://spartanmosquito.com/mosquito-eradicators/:</p> <ul style="list-style-type: none"> • <i>Eradicates mosquitoes for up to 90 days!</i> • <i>The mosquito population will suffer dramatically in about the first 15 days and will be up to 95% controlled for up to 90 days.</i> • <i>Spartan Mosquito Eradicators last up to 90 days.</i> 	<p>Submit competent and reliable efficacy data to substantiate all label and labeling claims. For example, replicated data must substantiate that 1-2 traps containing diluted sodium chloride alone will provide up to 95% control of mosquito populations for up to 90 days on an acre of land.</p>
<p>Failure to Meet Condition 1:</p> <ul style="list-style-type: none"> • Active Ingredients Must be Only Those Listed in 40 CFR 152.25(f)(1). Yeast and sugar are claimed as inert ingredients on the label. The reaction of yeast with sugar and warm water is known to produce carbon dioxide. Yeast in this product is functioning as an attractant to lure mosquitoes into the trap. Yeast and carbon dioxide are EPA registered active ingredients. Yeast is not an approved active ingredient in 25(b) products. • A distributor of this product claims "sugar, salt, and yeast" are active ingredients. Salt is the only allowed Active Ingredient: EPA Condition 1 (https://www.epa.gov/minimum-riskpesticides/conditions-minimum-risk-pesticides) listed in 40 CFR 125.25 (f)(1). 	<p>Submit Spartan Mosquito Eradicator to EPA to determine if this product meets the conditions for exemption from FIFRA regulation. Otherwise, reformulate using efficacious and ingredients allowed for exemption under FIFRA 25(b).</p>

COMMENTS: Your failure to timely comply with this notice may lead to the denial of your application. Corrections must be received by WSDA by the "CORRECT BY" date.

You must submit a written request to extend the time allowed to achieve compliance. Tell us what your good cause reasons are for the extension, what you have done so far to achieve compliance, and how long you want for an extension. Any extension request must be received by fax or regular mail five business days prior to the compliance due date.

For technical assistance services or compliance information, please call or write the office indicated below:

Steve L. Foss, WSDA
PO BOX 42560, Olympia, Washington 98504-2560

Ph:360-902-2049 Fax: 360-902-2093
E-mail: sfoss@agr.wa.gov

OFFICE USE ONLY

☐ Extension Granted
☐ Extension Denied

Date:
Date:

Extended Correction Date:
Reason:

Date mailed:

WSDA Rep:

SIGNATURE

☐ PERSON RESPONSIBLE

☐ FILE

☐ ADMIN. REG. OFFICE

The following are the statute(s) and/or rules cited in the Notice of Correction:

RCW 15.58.060 Statement for registration—Contents.

- (1) The applicant for registration shall file a statement with the department which shall include:
 - (a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;
 - (b) The name of the pesticide;
 - (c) The complete formula of the pesticide, including the active and inert ingredients: PROVIDED, That confidential business information of a proprietary nature is not made available to any other person and is exempt from disclosure as a public record, as provided by RCW 42.56.070;
 - (d) Other necessary information required for completion of the department's application for registration form; and
 - (e) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions and precautions for use.
- (2) The director may require a full description of the tests made and the results thereof upon which the claims are based.
- (3) The director may prescribe other necessary information by rule.

WAC 16-228-1400 - What are the requirements for pesticide labels?

- (5) Labels for minimum risk pesticides exempted from federal registration under section 25(b) of FIFRA must include the following:
 - (a) The product brand name.
 - (b) The product function. The function(s) claimed must be consistent with product ingredients.
 - (c) An ingredient statement that shall include the following:
 - (i) "Active ingredients." These ingredients must be listed by name (in descending order of composition) with individual percentage(s). Only active ingredients listed in 40 C.F.R. 152.25(g) are permitted;
 - (ii) "Inert ingredients" or "other ingredients." These ingredients must be listed by name with the cumulative percentage of all inert ingredients stated on the label. Only inert ingredients on EPA Inerts List 4A (40 C.F.R. 180.950) are permitted; and
 - (iii) The total percentage of all ingredients which must equal 100%.
 - (d) Directions for use that must include a description of intended uses and use rates. The label must not bear claims either to control or mitigate microorganisms that pose a threat to human health.
 - (e) Precautionary statements adequate to protect people and the environment that shall include the following:
 - (i) The statement "Keep Out Of Reach Of Children," and
 - (ii) A signal word (danger, warning or caution) and precautionary statements (including requirements for personal protective equipment, if applicable) consistent with product toxicity data.
 - (f) An appropriate storage and disposal statement.
 - (g) The name and address of the registrant or manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer, then the name must be qualified by appropriate wording such as "Packaged for" or "Distributed by."
 - (h) The weight or measure of the contents.
 - (i) In situations where the department deems it appropriate, the use of alternative language and/or statements may be allowed or required.
 - (j) Optional information: The minimum risk pesticide label may also include the Washington registration number and a label identification code (such as the revision date).



STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

CERTIFIED AND FIRST CLASS MAIL: RETURN RECEIPT REQUESTED

January 4, 2022

AC2T Inc., dba Spartan Mosquito
Attn: Joshua A. Mars, Attorney-in-fact
P.O. Box 18556
Hattiesburg, MS 39404

Re: Notice of Intent No. PMPR-22-0001

Dear Mr. Mars:

Enclosed is a Notice of Intent to deny your pesticide registration renewal request and a Notice of Rights and Opportunity for a Brief Adjudicative Proceeding No. PMPR-22-0001. Please read these documents carefully, and note the strict deadline for your response. If you wish to contest the Notice of Intent, your Request for Brief Adjudicative Proceeding must be **POSTMARKED OR RECEIVED** by the Department not later than January 31, 2022.

If you have any questions about these documents please call me at (360) 902-1851 or email me at kmdavis@agr.wa.gov.

Sincerely,

Kelle Davis
Policy Assistant
Pesticide Management Division

CERTIFICATE OF SERVICE

I certify that I caused to be mailed a copy of these documents to the within-named interested parties via
FIRST CLASS & CERTIFIED MAIL

at their respective addresses, postage prepaid, on
January 4, 2022

Representative,
Washington State Department of Agriculture

Enclosures

CC: WSDA Case File: AC2T Inc., dba Spartan Mosquito, PMPR-22-0001
Brent Perry, WSDA Registration Services Acting Program Manager
Gary Vetter, WSDA Registration Services Supervisor
Scott Nielsen, WSDA Case Review Officer
Gloriann Robinson, WSDA Administrative Regulations

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF AGRICULTURE OF THE
STATE OF WASHINGTON**

**In the Matter of the
Application for Re-Registration of:**

**AC2T Inc., dba Spartan Mosquito
*Spartan Mosquito Eradicator***

PMPR-22-0001

**NOTICE OF INTENT TO DENY
REGISTRATION AND NOTICE OF
RIGHTS AND OPPORTUNITY FOR A
BRIEF ADJUDICATIVE PROCEEDING**

TO: AC2T Inc., dba Spartan Mosquito
P.O. Box 18556
Hattiesburg, MS 39404

ATTENTION: Mr. Joshua A. Mars, Attorney-in-fact

Section 1: JURISDICTION

- 1.1** AC2T Inc., dba Spartan Mosquito is requesting to re-register a pesticide with the Washington State Department of Agriculture Pesticide Management Division (Department) and therefore is subject to the jurisdiction of the Department under chapter 15.58 RCW, Washington Pesticide Control Act, and chapter 16-228 WAC, General Pesticide Rules.

Section 2: LEGAL AUTHORITY

- 2.1** RCW 15.58.110 The Department may deny an application for registration if the applicant fails to comply with the provisions of chapter 15.58 RCW or requests for corrections to the application.
- 2.2** WAC 16-08-141(2)(s) The Department may use Brief Adjudicative Proceedings for actions taken with respect to pesticide registrations.

Section 3: BASIS FOR DENIAL OF APPLICATION

- 3.1** The Department received the original application for registration of AC2T Inc., dba Spartan Mosquito's *Spartan Mosquito Eradicator* on February 1, 2018. The application, signed by Joshua A. Mars, Attorney-in-fact, certified by his signature that the information accompanying (the) application and all referenced product labels (were) true and correct in every respect, and that all product labels (were) in compliance with applicable federal and state requirements for

registration. (See Attachment 1, 1 page). The application certified that *Spartan Mosquito Eradicator* was a 25(b) pesticide and exempt from registration with the Environmental Protection Agency (EPA) under Federal Insecticide Fungicide and Rodenticide Act (FIFRA) regulations.

- 3.2 FIFRA Section 25(b) Minimum Risk Pesticides meet the definition of a pesticide under chapter RCW 15.58.030 (31)(a).
- 3.3 The original application for registration was received on February 1, 2018 and was registered for distribution into the state of Washington on March 30, 2018 based on the information in the application packet.
- 3.4 On November 11, 2019, the Department received an Application for Re-Registration of Pesticides from AC2T Inc., dba Spartan Mosquito for *Spartan Mosquito Eradicator*. (See Attachment 2, 2 pages).
- 3.5 An application for pesticide registration and re-registration must meet the requirements and conditions of RCW 15.58.060, and WAC 16-228-1400.
 - a. RCW 15.58.060 (2) states that *The director may require a full description of the tests made and the results thereof upon which the claims are based.*
 - b. WAC 16-228-1400 states that *pesticide labeling shall meet the standards or criteria of FIFRA*. AC2T Inc., dba Spartan Mosquito's *Spartan Mosquito Eradicator* claims to be a 25(b) Minimum Risk Pesticide and therefore must meet the 6 conditions outlined by EPA in FIFRA in order to be exempt from federal registration.
- 3.6 The Department requires efficacy data for human health pests, including mosquitos. The Department's Guidance for Registration and Labeling of Section 25(b) Minimum Risk Pesticides found on WSDA's public website outlines the efficacy data requirements.
- 3.7 AC2T Inc., dba Spartan Mosquito's *Spartan Mosquito Eradicator* label (attachment 3, 2 pages) claims to "eradicate your mosquito population for up to 90 days." In addition, the label claims that "The mosquito population will suffer dramatically in the first 15 days, and will be 95% controlled for up to 90 days."
- 3.8 On February 11, 2020, the Department sent a Notice of Correction PR-08-0001-20 (see Attachment 4, 3 pages) requesting ACT2 Inc., dba Spartan Mosquito to correct the following for the re-registration of *Spartan Mosquito Eradicator*:
 - a. In accordance with FIFRA Section 25(b) Condition 4, the product label or labeling must not bear claims to control or mitigate organisms that pose a threat to human health: Delete all false or misleading claims on the label, advertisements, and websites (including all distributor sites such as Amazon, Walmart, Lowes, etc.) and amend exaggerated claims to be in compliance with label requirements and guidelines.
 - b. In accordance with FIFRA section 25(b) Condition 6, the label cannot include any false or misleading statements, and in accordance with Department policy required efficacy data for human health pests: Submit competent and reliable efficacy data to substantiate all label and labeling claims. For example, replicated data must substantiate that 1-2 traps containing diluted sodium chloride alone will provide up to 95% control of mosquito populations for up to 90 days on an acre of land.
 - c. In accordance with FIFRA section 25(b) Condition 1, the product's active ingredients must only be those that are listed in 40 CFR 152.25(f)(1): Inert ingredients in the formulation

appear to be functioning as active ingredients. Submit *Spartan Mosquito Eradicator* to EPA to determine if this product meets the conditions for exemption from FIFRA regulation. Otherwise, reformulate using efficacious and ingredients allowed for exemption under FIFRA 25(b).

The Notice of Correction also warned that if the requested information or corrections were not received by the due date of March 10, 2020, that the application for re-registration for *Spartan Mosquito Eradicator* would be denied.

3.9 As of January 4, 2022, the Department has not received the requested information.

Section 4: SUMMARY OF INTENDED ACTION

- 4.1** Based on the foregoing, the Department intends to deny ACT2 Inc., dba Spartan Mosquito's application to re-register *Spartan Mosquito Eradicator* in Washington State for the following reasons:
- 4.1a** RCW 15.58.030 (31) defines the term pesticide, which includes minimum risk pesticides.
- 4.1b** RCW 15.58.060 states that the director may require a full description of the tests made and the results thereof upon which the claims are based.
- 4.1c** WAC 16-228-1400 states that pesticide labeling shall meet the standards or criteria of FIFRA.
- 4.1d** RCW 15.58.100 states the Department can register a pesticide only after it is determined that the labeling and other materials required to be submitted comply with the requirements of chapter RCW 15.58. Joshua A. Mars, Attorney-in-fact, of AC2T Inc., dba Spartan Mosquito, did not submit the required information.



Kelle Davis
Policy Assistant
Pesticide Management Division
Washington State Department of Agriculture

Date: January 4, 2022

NOTICE OF RIGHTS AND OPPORTUNITY FOR BRIEF ADJUDICATIVE PROCEEDING

You have the right to request a Brief Adjudicative Proceeding to determine whether the allegations are true and whether the Washington State Department of Agriculture (Department) should take the enforcement actions described in the Notice of Intent. If you wish to request a Brief Adjudicative Proceeding, you must submit a request in writing along with a written explanation of your view of the facts and circumstances regarding the allegations. Your written explanation is necessary to help the presiding officer determine whether the allegations are true and whether the enforcement actions described in the Notice of Intent should be imposed.

You may submit this Request for a Brief Adjudicative Proceeding in one of the following ways:

1. Email it as an attachment, or in the body of the email include your responses to Section One, Two, Three, and Four and send it to: presidingofficer@agr.wa.gov
2. Mail it to: Gloriann Robinson, Presiding Officer
 Administrative Regulations Program
 Washington State Department of Agriculture
 P.O. Box 42560
 Olympia, Washington 98504-2560
3. Fax it to: (360) 902-2092

Your request for a Brief Adjudicative Proceeding must be received by the Department within twenty-five (25) days of service of this notice. If mailed, it must be postmarked within twenty-five (25) days of service of this notice. The date of service of this notice is the date the Department deposited this notice in the mail (date noted on the Certificate of Service) or the date the Department hand delivered this notice. Your 25-day deadline to request a Brief Adjudicative Proceeding is calculated from this date. Failure to adhere to this deadline will constitute a waiver of your right to a Brief Adjudicative Proceeding.

You may also request the opportunity to make an oral statement *in addition* to your written explanation. The request to make an oral statement must be included with your written statement. Your request may be granted if the presiding officer determines such a statement would benefit the presiding officer in reaching a decision. If the presiding officer grants a request to make an oral statement, you will be notified of the time and place for making an oral statement and all parties shall be entitled to make oral statements. Should any party fail to appear at the designated time and place to provide an oral statement, the presiding officer will take the oral statement of any party present and shall consider it with all written submissions.

If either you do not request a Brief Adjudicative Proceeding, you do not submit a written explanation, or if your written Brief Adjudicative Proceeding request is not postmarked or received within the deadline stated above, this will constitute a waiver of your right to a Brief Adjudicative Proceeding and the Director will find that you do not contest the Department's enforcement actions. Upon such a finding by the Director, a default order will be entered to affirm the enforcement actions.

INTERPRETER AVAILABILITY: If you or a witness for you is a person who cannot readily speak, hear, read, understand, or communicate in the English language, a qualified interpreter may be appointed at no cost to you or your witness. You may request a qualified interpreter on the attached Request for Brief Adjudicative Proceeding.

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF AGRICULTURE OF THE
STATE OF WASHINGTON**

SECTION ONE: REQUEST FOR BRIEF ADJUDICATIVE PROCEEDING

(Please check A or B)

**IN THE MATTER OF THE APPLICATION FOR
RE-REGISTRATION OF:**

**AC2T Inc., dba Spartan Mosquito
*Spartan Mosquito Eradicator***

PMPR-22-0001

REQUEST FOR BRIEF

ADJUDICATIVE PROCEEDING

A. ☐ I REQUEST A BRIEF ADJUDICATIVE PROCEEDING in this matter and the opportunity to provide a written explanation concerning the alleged violations, which I have included below.

☐ I will be represented by an attorney or an individual that I authorize to represent me.

The name and address of my attorney or authorized representative is:

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ E-mail: _____

B. ☐ I DO NOT CONTEST THE ALLEGATIONS AND WAIVE my right to a Brief Adjudicative Proceeding in this matter.

SECTION TWO: WRITTEN EXPLANATION

WRITTEN EXPLANATION OF ALLEGED VIOLATION(S) (You may attach additional comment sheets and copies of documents and other written information that applies to your case):

SECTION THREE: REQUEST FOR OPPORTUNITY TO MAKE AN ORAL STATEMENT

- ☐ In addition to my written explanation, I request an opportunity to make an oral statement on the alleged violations for the following reasons. *(The presiding officer may grant a request for an oral statement if s/he believes an oral statement will benefit the presiding officer in making a decision.)*

SECTION FOUR: INTERPRETER REQUEST

- ☐ **I REQUEST** that a qualified interpreter be appointed to interpret for me for the oral statement (if granted). My primary language is _____ (identify language). My hearing or speech impaired status is _____ (identify impaired status).

I understand that an interpreter will be appointed at no cost to me for the oral statement. **Only persons certified by the state can provide interpretation services.**

SECTION FIVE: HOW TO SUBMIT YOUR REQUEST

You may submit this Request for Brief Adjudicative Proceeding in one of the following ways:

1. Email it as an attachment, or in the body of the email include your responses to Section One, Two, Three, and Four and send to: presidingofficer@agr.wa.gov
2. Mail it to: Gloriann Robinson, Presiding Officer
 Administrative Regulations Program
 Washington State Department of Agriculture
 P.O. Box 42560
 Olympia, Washington 98504-2560
3. Fax it to: (360) 902-2092

THIS REQUEST FOR A BRIEF ADJUDICATIVE PROCEEDING MUST BE RECEIVED BY THE DEPARTMENT WITHIN TWENTY-FIVE (25) DAYS OF SERVICE OF THIS NOTICE. IF MAILED, IT MUST BE POSTMARKED WITHIN TWENTY-FIVE (25) DAYS OF SERVICE OF THIS NOTICE. FAILURE TO ADHERE TO THIS DEADLINE WILL CONSTITUTE A WAIVER OF YOUR RIGHT TO A BRIEF ADJUDICATIVE PROCEEDING AND THE DEPARTMENT WILL ISSUE A DEFAULT ORDER IMPOSING THE PENALTIES LISTED IN THE NOTICE OF INTENT.

Signature: _____
Print Name: _____
Date: _____
Daytime Phone Number: _____